

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 fails to acknowledge the consequences of its prior release of much of the material that it now wishes to keep secret, and 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 submissions of both the Bureau and the Review Board. We are confident that, in accordance with the standards 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

cc (with enclosure):

The Honorable Louis J. Freeh
Director, Federal Bureau of Investigation

The Honorable Jamie Gorelick
Deputy Attorney General

The Honorable Warren M. Christopher
Secretary of State

ASSASSINATION RECORDS REVIEW BOARD'S RESPONSE
TO THE FBI'S AUGUST 16, 1995 LETTER REGARDING THE
FBI'S APPEAL OF FORMAL DETERMINATIONS
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 appeal of the Review Board's formal determination to open nine previously redacted documents.¹ The Bureau's letter only confirms its failure to meet its evidentiary burden to sustain its postponements under the JFK Act.

Informant issue

The primary issue in this part of the appeal is whether the release of information tending to identify persons who gave the Bureau information in the early 1960's would do genuine harm in 1995. The FBI has provided no evidence to support its assertions that it would.

"Particularized evidence." The August 16 letter mischaracterizes the issue on appeal. It is not whether the FBI must submit "particularized evidence" of a current need to protect an informant, but whether it must submit *any evidence at all*. The FBI still has offered no evidence whatsoever of the harms that assertedly would flow from releasing this thirty-year-old information. Instead, the August 16 letter once again restates the Bureau's internal institutional policies, and quarrels with the "particularized showing" requirement enunciated, not by the Review Board, but by the FBI's own Director in 1992. This quarrel is beside the point: unless the JFK Act's requirement of "clear and convincing evidence" can be satisfied merely by recitation of an agency's policy preferences, these documents must be released in full.

Willingly compromised informants. The Review Board's August 11 memorandum discussed how the FBI has released information indistinguishable from the type of information that it now claims must be withheld to protect informants. The FBI in its August 16 letter insisted that it had never intentionally compromised informants in prior releases. But the FBI's intentions, past or present, are irrelevant. Prior releases have, by the standards the FBI now seeks to apply, compromised many informant relationships, yet the FBI has not provided any evidence that these releases have harmed any informants or current investigations. The prior releases accordingly belie the claim that harm would result from releasing the appealed documents.

Foreign relations issue

¹On August 9, the FBI submitted its appeal of the Review Board's formal determinations regarding these documents and its arguments for continued postponement. The Review Board submitted its arguments on appeal by memorandum dated August 11. The FBI's August 16 letter responded to the August 11 memorandum.

In its first submission, the Bureau principally argued that the release of any of the foreign relations information at issue would cause “grave injury to the conduct of United States foreign relations.” FBI’s Petition for Postponement, page 4. Yet the Review Board’s August 11 memorandum showed that much of this information has already been officially released. The Bureau’s August 16 letter does not deny any of the factual assertions made by the Review Board regarding these prior official releases.² Moreover, the Bureau’s letter ignores the Review Board’s challenge to show that any harm resulted from prior releases of the information -- effectively conceding that no harm resulted.

The FBI adduces just one reason why releasing the appealed documents would do “grave injury” where prior releases did none: regarding the appealed documents, the FBI sought, and was refused, the foreign government’s prior consent to release. The FBI reasons that the harm to foreign relations that would follow from releasing information despite such refusal is so severe that postponement is justified. But this argument results in a paradox: if these documents had been released without consulting any foreign government, as apparently was done with the prior releases, there would have been no harm to foreign relations. Now, the FBI claims that its foreign consultations in and of themselves demonstrate that grave harm would result from release. Such bootstrapping is not clear and convincing evidence.

The unexplained desire of a foreign government to redact from thirty-five year-old documents information officially released elsewhere may provide reason to do so --in the absence of competing considerations. But here there are *compelling* interests favoring disclosure. Neither the FBI, nor the State Department, nor any foreign government is charged with weighing the compelling interest in giving the American public a full historical record of the assassination of President Kennedy against reasons for continued secrecy. The Review Board bears that responsibility and has discharged it carefully. In so doing, it found no evidence of any harm to foreign relations that might even come close to outweighing the compelling interest in disclosure of these records.

Conclusion

The Review Board remains convinced that full release of the appealed documents is the only result consistent with the JFK Act. Accordingly, the Review Board respectfully urges that its formal determinations be upheld by the President.

²Page 19 of our August 11 memorandum inaccurately stated that the publicly-available version of a particular Record Identification Form identifies a foreign government agency. In fact, this entry appears as “RESTRICTED” on the version of this form available to the public.

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 interest^{5s}."

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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