

August 11, 1997

LTC Michael D. Bisacre, U.S. Army
Commander, 716th Military Intelligence Battalion (Attn: IAMG-C-CO)
4553 Pike Road
Fort Meade, Maryland 21227-5998

Re: IRR Responsibilities under the President John F. Kennedy Assassination Records Collection Act, 44 U.S.C. § 2107 (Supp. V 1994)

Dear Colonel Bisacre:

I am writing to you in anticipation of the scheduled August 20, 1997 meeting between the Assassination Records Review Board and the Investigative Records Repository (IRR), which we are advised has recently been placed under your command. I will be attending the meeting along with Doug Horne, our Military Team Leader, and Jim Goslee. We understand that you and Elaine V. Rogic, Chief, Investigative Records Repository, also will be attending.

I will begin by discussing some background information regarding the President John F. Kennedy Assassination Records Collection Act, 44 U.S.C. § 2107 (Supp. V 1994) (JFK Act) and then turn to IRR records. (A copy of the JFK Act is enclosed for your convenience.)

Background on the JFK Act

The JFK Act was passed by Congress in order to ensure that all records related to the assassination of President Kennedy have been located, declassified (to the greatest extent possible), and placed into the JFK Collection at the National Archives. The Assassination Records Review Board is an independent Federal agency that is statutorily charged with the responsibility of oversight over all Federal entities on JFK issues. In that regard, we have been working with the IRR during the past two years as it completes the process of identifying and reviewing records related to the assassination of President Kennedy. All Review Board staff members are required to hold Top Secret security clearances after receiving a full field background investigation.

The Federal agencies that have the greatest number of assassination records have been working

vigorously on this project for several years and the volume of documents in the JFK Collection is now in the tens of thousands. All records that are being sent to the Archives are identified by a Record Identification Form (RIF) that identifies the originating agency, basic information about the record, and the status of the record.

Postponements Under the JFK Act

Whenever an Agency wishes, in the terms of the JFK Act, to “postpone” (*i.e.*, redact) information, it must submit those proposed postponements to the Review Board, which then makes “formal determinations” on the release of the information. If an Agency disagrees with a decision of the Review Board, its sole recourse is to appeal the Review Board’s decision to the President.¹

Whenever an agency wishes to postpone information from a record before the record is released to the public, the Agency must identify with specificity the information to be postponed, identify the provision of Section 6 of the JFK Act that permits postponements, and provide “clear and convincing” evidence to the Review Board as to why the information should be postponed. (*See* Section 6 of the JFK Act.) By way of example, the FBI, which seeks to postpone information that might identify informants, provides evidence to the Review Board that discloses whether the informant is still alive, whether the informant risks incurring harm if his name is released, and provides other evidence that might be useful to the Review Board when evaluating the proposed postponements. The Review Board takes very seriously its statutory obligation to sustain proposed postponements “*only in the rarest of cases* [where there is a] legitimate need for continued protection of such records.” *See* Section 2(a)(7) (emphasis added). Under this statutory standard, which presumes the release of information except in the “rarest of cases,” agencies have tended to postpone very little information and then only when they are able to provide evidence supporting the proposed postponements.²

¹Thus far, only one Agency, the FBI, has made an appeal to the President. After a full briefing of the issues by the FBI and the Review Board, the FBI withdrew *all* of its appeals. As a result, *every* formal determination made by the Review Board has been followed and every record has been made available to the public in accordance with the Board’s decisions.

²The Review Board does, however, routinely sustain postponements of Social Security numbers. No evidence need be provided for such postponements.

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IRR's JFK Records Collection

We understand that IRR has collected a group of (approximately) 36 files for processing under the JFK Act. It is also our understanding that IRR has reviewed almost all of these files for its own equities, has identified third-agency equities, has referred third-agency records for review, and is awaiting responses from the third agencies. Our staffs previously have conducted discussions regarding what the Review Board may be able to do to facilitate the return of referred records so that processing can be completed.

In December, 1996, the Review Board staff proposed an arrangement whereby we would take responsibility for pursuing the return of IRR's third-agency referrals. As a part of the proposal, the IRR was to photocopy the pages in each file that had been referred to third agencies, and transmit the copy to us. This proposal was accepted by Elaine Rogic, Chief of IRR. Accordingly, copies of the outstanding referral pages for the applicable files were copied and forwarded to the Review Board by IRR. The Review Board is now prepared to assist in the referral process.

On July 29, 1997, Elaine Rogic sent to Doug Horne a facsimile (provided here as an enclosure) that identifies the IRR files for which IRR has not received responses to its referrals. This list identifies 25 files for which referrals have not been received by IRR, and for which the Review Board now accepts responsibility for follow-up. Our goal is to stimulate the agencies that have held referrals for an extended period of time to complete referral process and to return the referrals to IRR not later than October 24, 1997. The Review Board will inform all third agencies that the records are slated for Review Board determinations at the Board meeting in November and that their proposed postponements, as well as their evidence in support of the postponements, should be delivered to IRR by close of business on October 24. The agencies will be advised that if the requested information is not provided, the Review Board presumptively will vote to open the records in full.

Once the records have been returned by third agencies to IRR (by October 24), the following steps should be taken:

1. IRR should make a photocopy of the original record with *the proposed postponements either highlighted in yellow or clearly bracketed*. (The records with proposed postponements should have RIF forms attached.)
2. IRR should forward to the Review Board, by November 4, 1997, the highlighted or bracketed copies along with *all* evidence in support of the proposed postponements

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(whether provided by the third agencies or by the IRR). We can discuss with you the different ways that the evidence can be supplied to the Review Board.

Once the Review Board has made its formal determinations at its November meeting, it will notify promptly the IRR (and all relevant third agencies) of its decisions and explain the subsequent procedures. (Ultimately, for any documents containing postponements, the *original* documents will need to be transferred to the National Archives via the Review Board. The only original documents that IRR may transfer directly to the Archives are those for which there are no postponements. If there are no postponements, the original records will be made available to the public. Whenever records contain postponements, the original record will be maintained in secured storage at the National Archives and a redacted copy of the original (with sustained postponements blacked out by IRR) will be made available to the public.)

Should you have any questions, please call me at (202) 724-0088. I look forward to meeting with you on August 20.

Sincerely,

T. Jeremy Gunn
General Counsel and
Associate Director for Research and Analysis

Enclosures

cc: Elaine V. Rogic, Chief, Investigative Records Repository
Bert K. Haggett, DAMI-CIS(L)
Stuart F. Aly, Associate Deputy General Counsel, Department of Defense