

June 25, 1998

Mr. Frank W. Fountain  
Counsel  
President's Foreign Intelligence Advisory Board  
Old Executive Office Building--Room 340  
Washington, DC 20502

Dear Mr. Fountain:

I am writing in response to your letter dated June 16, 1998, and to Chairman Rudman's letter to Charles F.C. Ruff dated May 13, 1998.

Let me begin by thanking you for enclosing the PFIAB records at issue in your June 16 letter. We are very pleased to acknowledge that the PFIAB, like all other agencies of the U.S. Government, has taken appropriate steps to comply with the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. § 2107 ("JFK Act"). We understand your concerns about the sensitivity of your records and very much appreciate your willingness to have forwarded them to the Review Board.

As agreed in informal discussions, the ARRB staff will prepare Record Identification Forms (RIFs) for each PFIAB record and prepare the documents for inclusion in the JFK Collection at the National Archives and Records Administration (NARA). Copies of the RIFs and a duplicate set of records will be forwarded to PFIAB following the Review Board's July 7 meeting.

According to the JFK Act, "all Government records concerning the assassination of President John F. Kennedy should carry a presumption of immediate disclosure." JFK Act § 2(a)(2). Indeed, under the Act, "only in the rarest cases is there any legitimate need for continued protection of such records." JFK Act § 2(a)(7). To the extent that a government entity, such as the PFIAB, seeks to postpone the release of records or information, the JFK Act places the burden of proving the need for postponement squarely on the shoulders of the government office. Congress requires government offices to submit to the Review Board "clear and convincing evidence" in support of any proposed postponements. JFK Act §§ 6, 9(c)(1).

Should the PFIAB wish to postpone any information contained within its records, your representative may make an oral or written proffer to the Review Board at its July 7 meeting. (It is our understanding that you wish to have Chairman Rudman's May 13, 1998 letter considered. Although a copy of that letter was made available to the Review Board members as soon as it was received, we will be pleased to make another copy of it available prior to the Board's July 7 vote.) In addition to providing evidence for the July 7 meeting, the PFIAB also will have the opportunity to appeal Review Board decisions to the President. For the sake of economy, however, we strongly urge that any evidence or argument you might have against the release of the records first be presented to the Review Board.

Both your letter and that of Chairman Rudman suggested that PFIAB had already provided a copy of its records to NARA. NARA has informed us, however, that PFIAB records are only in courtesy storage and that they have not been legally accessioned by NARA as federal records. As such, the Review Board does not have immediate access to these records and the records are not in a position where they may be transferred to the JFK Collection at NARA. Therefore, the Review Board requests either that you provide us with a "clean" master copy of the designated records—which will be placed in protected storage at NARA by the Review Board for release with the JFK Collection in 2017—or that you provide NARA (or us) with sufficient written documentation that would permit full access to these records.

Chairman Rudman's May 13 suggestion that the PFIAB had already provided a copy of its records to NARA is but one example of several of the statements in his letter with which we might take issue. Although we wish to be on the record as having acknowledged his letter and having noted objections, we nevertheless do not believe that it would serve a sufficiently important purpose to respond further.

Your having sent the records to us satisfies our most important objective and, once again, we appreciate your having forwarded them to us.

Finally, your letter noted that two documents, numbers 198 and 199 (RIF numbers 177-10002-10083 and 177-10002-10084) from the Lyndon Baines Johnson Library, have been referred to the PFIAB by the Review Board. We request that you now return these documents since they are the copies designated for the JFK Collection at NARA and are marked with the original declassification stamps from other reviewing agencies. Please feel free, however, to make copies of the documents for your records.

If your staff has any questions concerning the processing of PFIAB records, please feel free to contact either Michelle Combs or me. Michelle will be contacting you shortly to pick up the clean copy of the designated records and the two documents from the Johnson Library.

Sincerely,

Mr. Frank Fountain  
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T. Jeremy Gunn  
Executive Director

cc: Charles F.C. Ruff, Esq.  
Mr. William H. Leary