

Assassination Records Review Board

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TO: Assassination Records Review Board and Staff
FROM: Sheryl Walter, General Counsel
SUBJECT: Agency records retention responsibilities

The purpose of this memorandum is to advise Review Board members and staff on the legal responsibilities regarding the creation, maintenance, and disposition of the records created during the lifetime of the Review Board. It is important that everyone read, understand, and implement these guidelines. If you have any questions now or in the future as to what these guidelines cover or your responsibilities under them, please do not hesitate to ask.

Legal Requirements

The Assassination Records Review Board was created by Congress as an independent federal agency. The Federal Records Act and its implementing regulations¹ mandate that all records made or received by a federal agency during the conduct of agency business are federal records that must be handled in accordance with established procedures to ensure their preservation for the future. In addition, in establishing the Review Board Congress required that "[u]pon termination and winding up, the Review Board shall transfer all of its records to the Archivist for inclusion in the [President John F. Kennedy Assassination Records] Collection and no record of the Review Board shall be destroyed." 44 U.S.C. §2107 note, Sec. 7(o)(3) (1992).²

¹ See 44 U.S.C. chapters 29, 31, and 33; 36 C.F.R. chapter 12, subchapter B.

² This means, for example, that the Review Board's records will not be subject to the periodic destruction schedules that apply to the records of other agencies.

Records Retention Guidelines

Because the legislation does not define the scope of the Review Board's "records," for purposes of implementing the Review Board's records retention responsibilities, the "records" requiring retention will be identified consistent with the rules already governing "federal records." Thus, not everything generated by Review Board members and staff qualifies as a "record" requiring retention. For example, phone messages on paper slips or sent on electronic mail, extra copies of documents or correspondence in addition to originals and file copies, drafts that reflect technical as opposed to substantive changes, and similar duplicative or non-substantive records need not be retained.

Types of records that **are** to be retained include, but are not limited to:

- Originals or file copies of all correspondence concerning the work of the Review Board;
- Review Board meeting files, including records of meetings held in executive session (including, e.g., the agenda, minutes or recordings of meetings, and briefing materials);
- Research papers, reports, analyses, and similar documents;
- Review forms and related materials;
- Correspondence and related records maintained by Review Board members and senior staff;
- Public contact and press files;
- Edited and unedited tapes and/or transcripts of all public meetings and all additional meetings that may be taped;
- Organization and function files relating to the overall organization of the Review Board;
- Project files, relating to a specific project from beginning to completion (often maintained by the staff member or team carrying out the project); and
- Chronological files.

See also the NARA publication *Managing the Records of Temporary Commissions* for a more detailed description of records to retain. (Copies of this publication have been distributed to Review Board members and are being distributed to staff along with this guidance.)

The goal of these records retention requirements is to ensure that all documentation of the work of the Review Board is preserved for current operational efficiency, for use in preparing reports to Congress, and for the historical record. Additional general guidelines for ensuring that this goal is achieved include the following:

1. All working files maintained by staff are federal records.
2. Personal papers that do not relate to the conduct of Review Board's activities should be kept separate from the Review Board's records.

3. Neither Review Board members nor staff, including departing staff, may remove or destroy any Review Board records.³
4. Review Board records created on personal computers should be preserved in hard copy and placed in the Review Board's official files. Do not delete such records unless you know a copy exists in the files.
5. Minutes, notes, or memoranda for the record should be kept and placed in Review Board files for important meetings at which agency business is transacted, of phone conversations on significant matters, or of actions taken under special circumstances outside of normal office processes. In many cases, it will suffice to record this information on the appropriate database of the Lotus Notes system (for example, the "Agency Contacts" or "Public Contacts" databases), which will be preserved as a repository of record material.
6. The Lotus Notes electronic mail (e-mail) system is also a repository of federal records. E-mail record guidance is described in more detail below. The e-mail system is intended for official and authorized purposes only. Please be aware that e-mail may not be confidential and you should have no expectation of absolute privacy when using the system, even with password protection. Records created on the Lotus Notes e-mail system do not need to be printed in hard copy as all messages sent on the Review Board's e-mail system are preserved for record purposes unless the "non-record" option is selected (see below). For Review Board business conducted by fax or on an e-mail system other than the Lotus Notes system, hard copies should be retained. Information of a non-business nature should be posted on the "Musings" database, which will not be maintained as a federal record.

Electronic Mail

The e-mail system is the medium for electronic messages and transmission of attachments. Review Board members and staff are encouraged to communicate using e-mail. However, the system is intended for official uses only, and the same rules of conduct apply to e-mail as to the use of any other Government property such as telephones or photocopiers.

E-mail is not and should not be considered an absolutely confidential system. You should not

³ Staff who may wish to retain copies of certain Review Board records for their own files should consult with their supervisors, the General Counsel, or the Executive Director.

use it with an expectation of absolute privacy. It should also not be used to transmit confidential, sensitive, or security classified information. Because e-mail messages are considered to be government property, staff should be aware that Review Board members, senior staff or supervisors may have access to e-mail messages if there is a legitimate government purpose for such access.

The e-mail system is set up to save a "record copy" of all e-mail messages in lieu of requiring a print-out in hard copy of each record. The system is also set up to provide a "non-record" option for messages that do not record the transaction of Review Board business, that duplicate information that is maintained elsewhere as a record, and that transmit brief phone messages (for example, the phone message form sent by the receptionist that contains only the caller's name, number, and a brief message).

However, all messages designated "non-record" are saved in a temporary file that is monitored periodically to ensure that the "non-record" option is being used appropriately. I have been designated by the Review Board's executive director, David Marwell, as the only person with the ability to conduct this monitoring. I will periodically review the non-record designations and do an a sampling to ensure that the function is being applied correctly. Messages incorrectly designated as "non-records" will be transferred to the record system. I will notify those individuals whose messages have been redesignated as records.

Public Access to Review Board Records

Review Board members and staff should be aware that all entries on the Lotus notes electronic system, with the exceptions noted above, will be preserved as a record and be part of the JFK Assassination Records Collection at NARA at the close of the Review Board's operation. Subject to the legislation's postponement provisions, all Review Board records, including those in electronic format, will thus be publicly available to researchers. All Review Board records, including those in electronic format, are also subject to Freedom of Information Act requests now (although the FOIA's statutory exemptions may preclude their release during the life of the Review Board).