

[Code of Federal Regulations]  
[Title 36, Volume 3, Parts 300 to end]  
[Revised as of July 1, 1997]  
From the U.S. Government Printing Office via GPO Access  
[CITE: 36CFR1405]

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## TITLE 36--PARKS, FORESTS, AND PUBLIC PROPERTY

### CHAPTER XIV--ASSASSINATION RECORDS REVIEW BOARD

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Authority: 5 U.S.C. 552b; 44 U.S.C. 2107.

Source: 60 FR 45336, Aug. 31, 1995, unless otherwise noted.

Sec. 1405.1 Applicability.

(a) This part implements the provisions of the Government in the Sunshine Act (5 U.S.C. 552b). These procedures apply to meetings of the Review Board. The Review Board may waive the provisions set forth in this Part to the extent authorized by law.

(b) Requests for all documents other than the transcripts, recordings, and minutes described in 1405.8 shall be governed by Review Board regulations pursuant to the Freedom of Information Act (5 U.S.C. 552).

Sec. 1405.2 Definitions.

As used in this part:

Chairperson means the Member elected by the Board to serve in said position pursuant to 44 U.S.C. 2107.7(f).

General Counsel means the Review Board's principal legal officer, or an attorney serving as Acting General Counsel.

Government office means any office of the Federal Government that has possession or control of assassination records as set forth in 44 U.S.C. 2107.3(5).

Meeting means the deliberations of three or more Members where such deliberations determine or result in the joint conduct or disposition of official Review Board business. A meeting does not include:

(1) Notation voting or similar consideration of business, whether by circulation of material to the Members individually in writing or by a polling of the Members individually by telephone.

(2) Action by three or more Members to:

(i) Open or to close a meeting or to release or to withhold information pursuant to Sec. 1405.5;

(ii) Set an agenda for a proposed meeting;

(iii) Call a meeting on less than seven days' notice as permitted by Sec. 1405.6(b); or

(iv) Change the subject matter or the determinations to open or to close a publicly announced meeting under Sec. 1405.7(b).

(3) A session attended by three or more Members for which the purpose is to receive briefings from the Review Board's staff or expert consultants,

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provided that members of the Review Board do not engage in deliberations at such sessions that determine or result in the joint conduct or disposition of official Review Board business on such matters. The General Counsel will inform the Review Board if developing discussions at a briefing or gathering should be deferred until a notice of an open meeting can be published in the Federal Register.

(4) A session attended by three or more Members for which the purpose is to receive informational briefings from representatives of government offices discussing classified or otherwise restricted information in accordance with the provisions of the JFK Act, provided that Members of the Review Board do not engage in deliberations at such sessions that determine or result in the joint conduct or disposition of official Review Board business on such matters.

(5) A gathering of three or more Members for the purpose of holding informal preliminary discussions or exchanges of views, but that does

not effectively predetermine official Review Board action.

Member means a current member of the Review Board as provided by law.

Presiding Officer means the Chairperson or any other Member authorized by the Review Board to preside at a meeting.

Review Board means the Assassination Records Review Board created pursuant to 44 U.S.C. 2107.7.

### Sec. 1405.3 Open meetings requirement.

Any meetings of the Review Board, as defined in Sec. 1504.2, shall be conducted in accordance with this part. Except as provided in Sec. 1405.4, the Review Board's meetings, or portions thereof, shall be open to public observation.

### Sec. 1405.4 Grounds on which meetings may be closed or information may be withheld.

A meeting may be closed when the Review Board properly determines that an open meeting would disclose information that may be withheld under the criteria enumerated below. Similarly, information that otherwise would be required to be disclosed under Secs. 1405.5, 1405.6, and 1405.7 may also be withheld under these criteria. All records of closed meetings shall, however, be disclosed at a future date consistent with the terms and requirements of the JFK Act. Except in a case where the Review Board finds that the public interest requires otherwise, the criteria for closing meetings are whether information disclosed at such meetings is likely to:

(a) Disclose matters that are:

(1) Specifically authorized under criteria established by the Executive Order to be kept secret in the interests of national defense or foreign policy; and

(2) In fact properly classified pursuant to such Executive order;

(b) Relate solely to the internal personnel rules and practices of the Review Board;

(c) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552), provided that such statute:

(1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(2) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(d) Discloses trade secrets and commercial or financial information obtained from a person and is privileged or confidential;

(e) Involves accusing any person of a crime, or formally censuring any person;

(f) Discloses information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Discloses investigatory records compiled for law enforcement purposes, or information which, if written, would be contained in such records, but only to the extent that the production of such records or information would:

(1) Interfere with enforcement proceedings;

(2) Deprive a person of a right to a fair trial or an impartial adjudication;

(3) Constitute an unwarranted invasion to personal privacy;

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency

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conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(5) Disclose investigative techniques and procedures; or

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Specifically concern the Review Board's issuance of a subpoena, or the Review Board's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Review Board of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing; or

(i) Disclose other information for which the Sunshine Act provides an exemption to the open meeting requirements of the Act.

Sec. 1405.5 Procedures for closing meetings, or withholding information, and requests by affected persons to close a meeting.

(a) A majority of all Members may vote to close a meeting or withhold information pertaining to that meeting. A separate vote shall be taken with respect to each action under Sec. 1405.4. A majority of the Review Board may act by taking a single vote with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. Each Member's vote under the paragraph shall be recorded and no proxies shall be permitted.

(b) Any person whose interests may be directly affected if a portion of a meeting is open may request the Review Board to close that portion of the meeting on the grounds referred to in Sec. 1405.4 (e), (f), or (g). Requests, with reasons in support thereof, should be submitted to the Office of the General Counsel, Assassination Records Review Board, 600 E Street, NW., 2nd Floor, Washington, DC 20530. On the motion of any Member, the Review Board shall determine by recorded vote whether to grant the request.

(c) Within one working day of any vote taken pursuant to this section, the Review Board shall make publicly available a written copy of such vote reflecting the vote of each Member on the question. If a portion of a meeting is to be closed to the public, the Review Board shall make available a full written explanation of its action closing the meeting (or portion thereof) and a list of all persons expected to attend the meeting and their affiliation.

(d) For each closed meeting, the General Counsel shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification shall be available for public inspection.

(e) For each closed meeting, the Presiding Officer shall issue a statement setting forth the time, place, and persons present. A copy of such statement shall be available for public inspection.

(f) For each closed meeting, with the exception of a meeting closed pursuant to Sec. 1405.4(h), the Review Board shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting. For meetings or portions thereof that are closed pursuant to 1405.4(h), the Review Board may maintain a set of minutes in lieu of such transcript or recording. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote. The records of closed meetings, in addition to all other records of the Review Board, shall be included as permanent records in the JFK Collection at the National Archives as provided by the JFK Act.

#### Sec. 1405.6 Procedures for public announcements of meetings.

(a) For each meeting, the Review Board shall make public announcement, at least one week before the meeting, of the:

(1) Time of the meeting;

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(2) Place of the meeting;

(3) Subject matter of the meeting;  
(4) Whether the meeting is to be open or closed; and  
(5) The name and business telephone number of the official designated by the Review Board to respond to requests for information about the meeting.

(b) The one week advance notice required by paragraph (a) of this section may be reduced only if:

(1) A majority of all Members determines by recorded vote that Review Board business requires that such meeting be scheduled in less than seven days; and

(2) The public announcement required by paragraph (a) of this section is made at the earliest practicable time.

Sec. 1405.7 Changes affecting a meeting following the public announcement of a meeting.

(a) After there has been a public announcement of a meeting, the time or place of such meeting may be changed only if the Review Board publicly announces such change at the earliest practicable time. Members need not approve such change by recorded vote.

(b) After there has been a public announcement of a meeting, the subject matter of such meeting, or the determination of the Review Board to open or to close a meeting or a portion thereof to the public, may be changed only when:

(1) A majority of all Members determines, by recorded vote, the Review Board business so requires and that no earlier announcement of the change was possible; and

(2) The Review Board publicly announces such change and the vote of each Member thereof at the earliest practicable time.

Sec. 1405.8 Availability and retention of transcripts, recordings, and minutes, and applicable fees.

In accordance with the provisions of the JFK Act, the Review Board shall retain the transcript, electronic recording, or minutes of the discussion of any item on the agenda or of any testimony received at a closed meeting for inclusion as a permanent record in the JFK Collection at the National Archives once the work of the Review Board is completed. The public shall have access to such records consistent with the provisions of the JFK Act which, according to the understanding of the Review Board, supersedes the Sunshine Act and FOIA. Copies of any nonexempt transcript or minutes, or transaction of such recordings disclosing the identity of each speaker, shall be furnished to any person at the actual cost of transcript or duplication unless otherwise provided by the terms of the JFK Act. If at some later time the Review

Board determines that there is no further justification for withholding a portion of a transcript, electronic recording, or minutes or other item of information for the public which had been previously withheld, such portion or information shall be made publicly available.

Sec. 1405.9 Severability.

If any provision of this part of the application of such provision to any person or circumstance, is held invalid, the remainder of this part of the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.