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ASSASSINATION RECORDS REVIEW BOARD

36 CFR Part 1415

Rules Implementing the Privacy Act

AGENCY: *Assassination Records Review Board*

ACTION: *Final Rulemaking*

SUMMARY: *This part contains the regulations of the Assassination Records Review Board (Review Board) implementing the Privacy Act of 1974. The regulations inform the public that the Review Board is responsible for carrying out the provisions of the Privacy Act and for issuing internal Review Board orders and directives in connection with the Privacy Act. These regulations apply to all records that are contained in systems of records maintained by the Review Board and*

that are retrieved by an individual's name or personal identifier.

Elsewhere in today's Federal Register appears a notice describing the Review Board's systems of records.

EFFECTIVE DATE: This regulation is effective (Insert date 30 days after date of publication in the FEDERAL REGISTER).

FOR FURTHER INFORMATION CONTACT: T. Jeremy Gunn, General Counsel, Assassination Records Review Board, 600 E Street, N.W., 2nd Floor, Washington, D.C. 20530.

SUPPLEMENTARY INFORMATION:

Background

Section 3(f) of the Privacy Act of 1974, 5 U.S.C. 552a(f), requires each Federal agency to promulgate rules that set forth procedures by which individuals can examine and request correction of agency records containing personal information. The Review Board, established by the President John F. Kennedy Assassination Records

Collection Act of 1992, is therefore obligated to publish such regulations.

Because Privacy Act regulations are intended for use by the general public, the Review Board has tried to keep its rule simple and straightforward. Some aspects of the Privacy Act dealing solely with the Review Board's internal procedures and safeguards may be dealt with by directive to the Review Board's staff rather than by rule.

Notice and Comment Process

The Review Board received no public comments in response to its Notice of Proposed Rulemaking. The staff, in consultation with the Office of Management and Budget, proposed some technical amendments to the regulations. The following changes have been incorporated into the final rule:

Privacy Act queries will be processed by a new Privacy Act Officer

rather than by the General Counsel. See §§ 1415.10, 1415.15, 1415.20, and 1415.25.

The term person has been replaced throughout by the term individual in order to clarify that corporations and other artificial persons are not covered by the Privacy Act regulations.

The definition of system of records in § 1415.10 has been revised to clarify that assassination records coming into the Review Board's temporary possession during its review are not subject to the Privacy Act.

The procedures for the handling of Privacy Act requests has been modified in § 1415.25(b) to extend somewhat the timing of the Review Board's response. The Privacy Act Officer is now allotted ten (rather than five) days to respond to a request and is also given some latitude for

an additional extension of time if one proves warranted. Similarly, the allotted time for the Executive Director's response to an appeal is thirty (rather than twenty) days in § 1415.30. The final rules also provide, in § 1415.35, more specific guidance for amending or correcting errors that may appear in records.

Section 1415.55 has been rewritten to provide more specific guidance on the exemptions applicable to the Review Board's various systems of records.

Paperwork Reduction Act Statement

The rule is not subject to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq. (amended 1995), because it does not contain any information collection requirements within the meaning of 44 U.S.C. 3502(4).

Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-12, the Review Board certifies that this rule will not have a significant economic impact on a substantial number of small entities and that, therefore, a regulatory flexibility analysis need not be prepared, 5 U.S.C. 605(b).

Review by OMB

The Office of Management and Budget has reviewed the regulation under Executive Order 12866.

List of Subjects in 36 CFR Part 1415

Privacy Act

The Proposed Regulations

The Review Board amends chapter XIV in title 36 of the Code of Federal Regulations by adding a new part 1415 to read as follows:

PART 1415--RULES IMPLEMENTING THE PRIVACY ACT

Sec.

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

§ 1415.5 Scope.

This part contains the Review Board's regulations implementing the Privacy Act of 1974, 5 U.S.C. 552a.

§ 1415.10 Definitions.

In addition to the definitions provided in the Privacy Act, the following terms are defined as follows:

Assassination records, for the purpose of this regulation only, are records created by Government offices (other than the Review Board), entities, and individuals that relate to the assassination of President John F. Kennedy that may, from time to time, come into the temporary custody of the Review Board but that are not the legal property of the Review Board.

Executive Director means the principal staff official appointed by the Review Board pursuant to 44 U.S.C. 2107.8(a).

JFK Act means the President John F. Kennedy Records Collection Act

of 1992.

Privacy Act Officer means the person designated by the Executive Director to administer the Review Board's activities pursuant to the regulations in this part.

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

System of records means a group of records that is within the possession and control of the Review Board and from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Assassination records, as defined above, are not included in the Review Board's systems of records.

§ 1415.15 Systems of records notification.

Any individual who wishes to know whether a system of records

contains a record pertaining to him or her may file a request in person or in writing. Written requests should be directed to the Privacy Act Officer, Assassination Records Review Board, 600 E Street, N.W., Washington, D.C. 20530, and should be clearly marked "Privacy Act Request."

§ 1415.20 Requests by an individual for access to their own records.

(a) Requests in writing. An individual may request access to his or her own records in writing by addressing a letter to the Privacy Act Officer, Assassination Records Review Board, 600 E Street, N.W., 2nd Floor, Washington, D.C. 20530. The request should contain the following information:

(1) Full name, address, and telephone number of requester;

(2) Proof of identification, which should be a copy of one of the

following:

Valid driver's license, valid passport, or other current identification which contains both an address and picture of the requester;

(3) The system of records in which the desired information is contained; and

(4) At the requester's option, authorization for expenses (see § 1415.50 below).

(b) Requests in person. Any individual may examine his or her own record on the Review Board's premises. To do so, the individual should call the Review Board's offices at (202) 724-0088 and ask to speak to the Privacy Act Officer. This call should be made at least two weeks prior to the time the requester would like to see the records. During this call, the requester should be prepared to provide the same information as that listed in paragraph (a) of this section except for proof of identification.

§ 1415.25 Processing of requests.

(a) The Privacy Act Officer will process all requests under both the Freedom of Information Act and the Privacy Act.

(b) The Privacy Act Officer will respond to the request within ten working days of its receipt by the Privacy Act Officer. If the Review Board needs additional time to respond, the Privacy Act Officer will provide the requester an explanation as to why the Review Board requires an extension.

(c) Following the initial call from the requester, the Privacy Act Officer will determine: (1) whether the records identified by the requester exist, and (2) whether they are subject to any exemption under § 1415.55 below. If the records exist and are not subject to exemption, the Privacy Act Officer will call the requester and arrange an appointment at a mutually agreeable time when the records can

be examined. At the appointment, the requester will be asked to present identification as stated in § 1415.20(a)(2). The requester may be accompanied by one individual of his or her own choosing, and should state during this call whether or not a second individual will be present at the appointment. In the event that a second individual accompanies the requester, the requester will be asked to provide the Review Board with written consent to disclose his or her records to the second individual.

(d) If a request is received for information compiled in reasonable anticipation of a civil action or proceeding, the Privacy Act Officer will determine whether to disclose the information and will inform the requester whether this information is subject to release under the Privacy Act (see 5 U.S.C. 552a(d)(5)).

§ 1415.30 Appeals from access denials.

When access to records has been denied in whole or in part by the Privacy Act Officer, the requester may file an appeal in writing. This appeal should be directed to the Executive Director, Assassination Records Review Board, 600 E Street, N.W., 2nd Floor, Washington, D.C. 20530. The appeal letter must specify those denied records that are still sought and state why the denial by the Privacy Act Officer is erroneous. The Executive Director or his representative will respond to such appeals within thirty working days after the appeal letter is received in the Review Board's offices, unless, for good cause shown, the Executive Director extends such thirty day period. The appeal determination will explain the basis for continuing to deny access to any requested records and will notify the requester of his or her right to judicial review of the Executive Director's determination.

§ 1415.35 Requests for amendment of records.

(a) *Amendment requests.* Any person is entitled to request amendment of a record pertaining to him or her. This request must be made in writing and should be addressed to the Privacy Act Officer, Assassination Records Review Board, 600 E Street, N.W., 2nd Floor, Washington, D.C. 20530. The letter should clearly identify the amendments desired. An edited copy will usually be acceptable for this purpose.

(b) *Initial response.* The Privacy Act Officer will acknowledge the request for amendment within ten working days of receipt of the request. The Privacy Act Officer will provide a letter to the requester within thirty working days stating whether or not the request for amendment has been granted or denied. The Privacy Act Officer will amend information that is not accurate, relevant, timely, or complete, unless the record is excluded or exempt. If the Privacy

Act Officer decides to deny any portion of the amendment request, the reasons for the denial will be provided to the requester. In addition, the Privacy Act Officer will inform the requester of his or her right to appeal the Privacy Act Officer's determination to the Executive Director.

§ 1415.40 Appeals from amendment denials.

(a) When amendment of records has been denied by the Privacy Act Officer, the requester may file an appeal in writing. This appeal should be directed to the Executive Director, Assassination Records Review Board, 600 E Street, N.W., 2nd Floor, Washington, D.C. 20530. The appeal letter must specify the record subject to the appeal, and state why the denial of amendment by the Privacy Act Officer is erroneous. The Executive Director or his representative will respond to such appeals within thirty working days (subject to

extension by the Executive Director for good cause) after the appeal letter has been received in the Review Board's offices.

(b) The appeal determination, if adverse to the requester in any respect, will: (1) explain the basis for denying amendment of the specified records; (2) inform the requester that he or she may file a concise statement setting forth reasons for disagreeing with the Executive Director's determination; and (3) inform the requester of his or her right to pursue a judicial remedy under 5 U.S.C. 552a(g)(1)(A).

§ 1415.45 Disclosure of records to third parties.

Records subject to the Privacy Act that are requested by a person other than the individual to whom they pertain will not be made available except in the following circumstances:

(a) Release is required under the Freedom of Information Act in

accordance with the Review Board's FOIA regulations, 36 CFR 1410;

(b) Pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains; or

(c) Release is authorized by 5 U.S.C. 552a(b)(1) or (3) through (11).

§ 1415.50 Fees.

A fee will not be charged for search or review of requested records, or for amendment of records. When a request is made for copies of records, a copying fee will be charged at the same rate established for FOIA requests. See 36 CFR § 1410.35. However, the first 100 pages will be free of charge.

§ 1415.55 Exemptions.

(a) The systems of records entitled "Investigations," "Personal Security Files," and "Subject File" contain some information

specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and which is properly classified pursuant to such Executive Order. Therefore, to the extent that information in these systems falls within the coverage of exemption (k)(1) of the Privacy Act, 5 U.S.C. 552a(k)(1), these systems of records are eligible for exemption from the requirements of the following subsections of the Privacy Act: subsections (c)(3), (d), (e)(1), (e)(4)(G), (H) and (I) and (f). Disclosure of information properly classified pursuant to an Executive Order would jeopardize the national defense or foreign policy of the United States.

(b) The systems of records entitled "Agency Contacts," "Investigations," "Public Contacts," and "Subject File" consist, in part, of investigatory material compiled by the Review Board for law

enforcement purposes other than material within the scope of subsection (j)(2) of 5 U.S.C. 552a. Provided however, that if any individual is denied any right, privilege or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence.

Therefore, to the extent that information in these systems falls within the coverage of exemption (k)(2) of the Privacy Act, 5 U.S.C.

552a(k)(2), these systems of records are eligible for exemption from

the requirements of the following subsections of the Privacy Act, for the reasons stated below.

(1) From subsection (c)(3) because release of the agency's accounting of certain disclosures to an individual who is the subject of an investigation could reveal the nature and scope of the investigation and could result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the investigation.

(2) From subsection (d) because release of investigative records to an individual who is the subject of an investigation could interfere with pending or prospective law enforcement proceedings, constitute an unwarranted invasion of the personal privacy of third parties, reveal the identity of confidential sources, or reveal sensitive investigative techniques and procedures.

(3) From subsections (d)(2), (3), and (4) because amendment or correction of investigative records could interfere with pending or prospective law enforcement proceedings, or could impose an impossible administrative and investigative burden by requiring the Review Board continuously to retrograde its investigations attempting to resolve questions of accuracy, relevance, timeliness, and completeness.

(4) From subsection (e)(1), because it is often impossible to determine relevance or necessity of information in the early stages of an investigation. The value of such information is a question of judgment and timing; what appears relevant and necessary when collected may ultimately be evaluated and viewed as irrelevant and unnecessary to an investigation.

(5) From subsection (e)(4)(G) and (H), because the Review Board

is claiming an exemption for subsections (d) (Access to Records) and (f)(Agency Rules) of the Act, these subsections are inapplicable to the extent that these systems of records are exempted from subsections (d) and (f).

(6) From subsection (f) because procedures for notice to an individual pursuant to subsection (f)(1) as to the existence of records pertaining to the person dealing with an actual or potential investigation must be exempted because such notice to an individual would be detrimental to the successful conduct of a pending or future investigation. In addition, mere notice of an investigation could inform the subject or others that their activities either are, or may become, the subject of an investigation and might enable the subjects to avoid detection or to destroy assassination records. Since the Review Board is claiming an exemption for subsection (d) of the Act

(Access to Records) the rules require pursuant to subsection (f)(2) through (5) are inapplicable to these systems of records to the extent that these systems of records are exempted from subsection (d).

(c) The systems of records entitled "Employment Applications" and "Personal Security Files" consist in part of investigatory material compiled by the Review Board for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or Federal contracts, the release of which would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence. Therefore, to the extent that information in these systems falls within the coverage of Exemption (k)(5) of the Privacy Act, 5 U.S.C. 552a(k)(5), these systems of records are eligible for exemption from the requirements of subsection (d)(1), because release

would reveal the identity of a source who furnished information to the Government under an express promise of confidentiality.

Revealing the identity of a confidential source could impede future cooperation by sources, and could result in harassment or harm to such sources.

Dated: December __, 1995

David G. Marwell

Executive Director

Assassination Records Review Board