

November 12, 1997

LTC Edith M. Rob
Deputy Legal Advisor
Office of the Inspector General
Department of the Army
1700 Army Pentagon
Washington, DC 20310-1700

Dear LTC Rob:

Thank you for your letter dated November 6, 1997, to Jim Goslee of our office regarding JFK assassination-related records that had been referred to your office by the Investigative Records Repository (IRR). Because we are now scheduling the records at issue for Board review on December 9, 1997, I thought it might be helpful for you if I were to respond to some of your concerns at this time.

Under the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. § 2107 (JFK Act), all records that are related to the assassination of President Kennedy—including those forwarded to you by the IRR—carry the presumption that they may be opened in full to the public. The JFK Act provides that “only in the rarest cases is there any legitimate need for continued protection of such records.” JFK Act, § 2((a)(7).

Although we understand how the objections you enumerate on pages 2 and 3 of your letter would be handled under FOIA and the Privacy Act, the JFK Act nevertheless supersedes those laws. Our Act specifically provides that “[w]hen this Act requires transmission of a record to the Archivist or public disclosure, it shall take precedence over any other law” JFK Act, § 11(a).

Section 6 of the Act enumerates the specific grounds for which evidence may be redacted (“postponed” in the language of the JFK Act). Under Section 6, records are to be opened to the public unless there is “clear and convincing evidence” that one of the enumerated criteria has been satisfied. The Review Board has interpreted Section 6 as offering agencies, including the Department of the Army, the opportunity to present specific evidence on specific redactions. If you

LTC Edith M. Rob
November 12, 1997
Page 2

wish, we would be pleased to present to the Review Board your letter of November 6 as your offer of evidence at the December 9 meeting. We also would be pleased to provide any additional evidence that you might wish to present.

I should caution you that the Review Board has not previously accepted the general types of arguments that are presented in your letter. For example, the FBI initially made policy arguments, quite similar to yours, when the first batches of its records were reviewed. The Board, nevertheless, voted to open the records. The FBI appealed the Board's decisions to President Clinton (as the JFK Act permits). After the FBI and the Review Board submitted written memoranda, and after a meeting at the White House, the FBI withdrew its appeals and the Board's determinations prevailed. No other agency has appealed the Board's decisions to the President, and the Board's determinations have prevailed in all cases. I would, therefore, urge you, to the extent that you wish to advance the arguments your letter raises, to provide specific evidence that specific individuals would be harmed if their names, addresses, and other such information were to be disclosed. Staff members of the Review Board will be pleased to provide you with additional guidance as to how you might prepare evidence for the Board's consideration.

As I mentioned in the first paragraph above, we have scheduled the records for review at the December 9 meeting. Although we very much wish to stay on schedule, we would be willing to provide you with some additional time if you are going to undertake the task of providing additional and specific information.

Please do not hesitate to contact me or Doug Horne, Chief Military Analyst, if we can be of further assistance.

Sincerely,

T. Jeremy Gunn
Executive Director and
General Counsel