

MEMORANDUM

April __, 1997

To: Assassination Records Review Board

cc: David G. Marwell

From: T. Jeremy Gunn

Subject: Proposed Criteria for Review of Postponements in the Segregated Collections

Background

In order to ensure that the Review Board will be able to complete its task of reviewing all identified assassination records, the Board recently took two significant steps. First, on November 13, 1996, it adopted guidelines with respect to reviewing FBI and CIA Segregated Records with regard to information that is “not believed relevant” (NBR) to the assassination. Second, in February 1997, the Review Board requested Congress to extend its tenure for one additional year.

It is the staff’s judgment that, even with the assumption that our operations may be extended through Fiscal Year 1998, the Review Board cannot hope to complete review of postponements in the “Segregated Collections” under the current method of review.¹ In particular, a modification of

¹The regulations adopted by the Board on November 13, 1996, provide that “Segregated Collections” are comprised of:

FBI records including (a) records requested by the House Select Committee on Assassinations (“HSCA”) in conjunction with its investigation into the Kennedy assassination; (b) records requested by the Church Committee in conjunction with its inquiry into issues related to the Kennedy assassination; and (c) records requested by other bodies (*e.g.*, Pike Committee, Abzug Committee, etc.) that relate to the Kennedy assassination;

CIA records including (a) the CIA’s Sequestered Collection, which includes 63 boxes of materials collected in relationship to government investigations of the assassination as well as one box of microfilm records and the microfilm records (box 64) includes several different types of records, including copies of documents from the Oswald 201 file, personnel records,

current postponement standards is necessary to finish the job. Otherwise, the Review Board will cease operations without having reviewed claimed postponements in tens of thousands of pages of FBI and CIA records.

In a further effort to enhance the Review Board's work, the staff proposes that the Review Board now issue revised guidelines for the review of records in the Segregated Collections. (These proposed guidelines do not affect the FBI's Core and Related Files or the CIA's 201 file on Oswald.) The four principal factors that underlie these proposed review guidelines are: first, continuing, to the greatest reasonable extent, the Review Board's established guidelines for postponements that have emerged over the past two years; second, proposing guidelines consistent with the Review Board's decision regarding NBR records; third, establishing reasonable and workable guidelines that will enable the Review Board, the ARRB staff, the CIA, and the FBI to complete the significant amount of work that remains; and finally, to provide reasonably consistent standards for the review of postponements in both CIA and FBI records.

Proposed Postponement Criteria

The following are, in summary form, proposed guidelines for reviewing postponements in the Segregated Collections.²

CIA Source and FBI Informant Postponements

and sometimes copies of complete files from which individual records in the first 63 boxes were taken; and (b) several boxes of CIA staff "working files"; and

Other Federal agency records that were requested by the HSCA in conjunction with its investigation of the Kennedy assassination and, to the extent that it is possible to determine, records requested by other official bodies in conjunction with investigations of the Kennedy assassination.

²The existing "NBR" guidelines allow the Review Board to remove from detailed consideration those records or files that truly have no apparent relevance to the assassination. Nevertheless, a significant number of files in the Segregated Collections contain records that shed some light on issues that the HSCA explored as potentially relevant to the assassination of President Kennedy. The following criteria would apply to all records in the Segregated Collections, including records containing some NBR redactions.

There are, of course, both similarities and differences between FBI informants and CIA sources. Like FBI informants, CIA sources may or may not be paid for the information that they provide and they may or may not be providers of information over the long-term. When providing information to the Bureau, FBI informants generally are understood to be cooperating with law enforcement officials for a legal and legitimate purpose. It is often, although not always, the case that FBI informants understand that at some point their name might surface in conjunction with a criminal prosecution and that they may need to testify in court. Foreign CIA sources, however, are not deemed to be cooperating with law enforcement officials but may, in fact, be committing the crime of espionage against their native country by cooperating with CIA. Furthermore, unlike FBI informants, CIA sources presume that their names will not be released publicly and certainly (in the ordinary course) they presume that their identities will not surface in criminal trials. As a practical matter, it is generally much easier today for the FBI to locate a former informant who resides in the United States than it is for the CIA to locate a former source.

Despite these differences -- differences which would generally suggest a greater degree of protection being owed to CIA sources -- the issues in terms of postponements are fundamentally similar.

CIA Sources

The Review Board established guidelines, during its December 1996 meeting, for handling CIA source issues and applied those guidelines at the January 1997 meeting. These guidelines directed the protection of names and identifying information of CIA sources in cases where the identity of the source is of low public interest or is peripheral to the JFK assassination. The Board's decision was based on two factors: the concern that since CIA sources live outside the United States, they could risk harm if their identities were revealed and the understanding that many of the sources referenced in CIA records appear infrequently and are of low public interest. The Board instructed the staff to protect these sources for ten years except in cases where it might be inferred that the source is committing treason. In these cases, the name and identifying information of the source will be protected until 2017. In records where the identity of the source is of possible public interest or is important to understanding information related to the assassination, the Review Board staff will ask the CIA to provide additional evidence to support the protection of the source's identity.

FBI Informants

Informant issues represent the largest category of postponements in the FBI's Segregated Collection, as they do in the "core" FBI assassination files. They also provide the greatest opportunity for

streamlining the review process. Currently, there are ten members of the Bureau's JFK Task Force³ tasked with researching individual informants in response to evidence requests from the ARRB. They retrieve and review the informants' files and attempt, through DMV, Social Security, and other database searches, to determine if the informant is alive. Under current ARRB standards for "core" files, this work is necessary to provide evidence to support redacting the informant's name, *regardless* of whether the informant provided information. Removing the requirement of proving whether informants are alive would free up significant resources that could be deployed to reviewing unprocessed HSCA subjects.

The proposed approach to HSCA subjects is to protect informant-identifying information, without requiring the Bureau to make a showing that the informant is alive. This protection would extend to individuals characterized as symbol-number informants, "PSIs," "PCIs," "established sources," "panel sources," and the like -- designations that indicate an ongoing relationship with the FBI. It would not extend to individuals who requested that their identity be protected in an isolated contact with the FBI or to local and state law enforcement officers.

³Six work full-time on informant evidence, four devote about half their time to informant evidence.

The “informant-identifying information” to be protected would include the customary (*i.e.*, informant-specific) portions of informant symbol numbers and file numbers, informant names, and -- at least potentially -- descriptions of, and information received from, the informant. How much, if any, of the latter type of information should be redacted would be the principal focus of our staff-level discussions with the FBI. The staff’s principal goal in this process, with regard to each informant, would be to release as much information that is relevant to understanding the assassination as possible. In discussions with the FBI, the staff would be prepared, if necessary, to concede redaction of informant-identifying information that is unrelated to the assassination in order to ensure that more pertinent information is released.⁴ The presumption will be that an informant’s identity will be released if the informant provides “positive” information about an assassination-related issue. To overcome this presumption of release for informants with “positive” information, the FBI would need to make a particularized showing that the identifying information should be released. To the extent that an informant’s identity is protected, it will be postponed for 10 years *unless* the FBI makes a particularized showing of the possibility of harm, in which case the information may then be postponed until 2017.

CIA Employee Name Postponements

Over the past year the CIA has addressed the employee name issue and has released some names that it had previously asked the Board to postpone. But during that time the list of names has grown to a size that had not been imagined when we began this process. To date, the Review Board staff has identified in the JFK collection over 650 names of CIA employees. These names appear in more than 1000 documents already reviewed by the Board and numerous additional records which have not yet been processed. While some of these employee names are of import to the assassination of President Kennedy, many appear only a few times in the entire JFK collection and seem to add little, if any, useful information to the historical record.

CIA’s argument to protect employee names emphasizes a number of points. First, since many employees are “under cover,” the maintenance of that cover is critical to gathering intelligence. CIA argues that identification of a name can identify the cover provider and jeopardize operations. Second, although the majority of names are of retired CIA employees, CIA has a confidentiality

⁴In HSCA subjects, there typically will not be information about Ruby, Oswald or the assassination itself. However, in a file on, for example, Sam Giancana, there may be informant reports on Giancana’s support of anti-Castro activities, and reports from the same informant on day-to-day numbers operations in the Chicago area. The staff would set a higher priority on release of the former reports than on the latter.

agreement with them and many do not want their past Agency affiliation released. The argument here is that release may jeopardize business relationships or personal safety. Such arguments have already been presented to the Board. Their merit can only be determined on a case by case basis. However, the volume of names in the JFK collection would stall the review of documents if the postponement of every name in the collection was reviewed to test the suitability of such arguments.

CIA has proposed, and the Review Board staff agrees, that we treat employee names in a manner similar to that applied to Source names: to postpone until 2017 those employee names that are of low public interest or are of peripheral interest to the assassination. It will be presumed that employee names will be released if their identities are important to the assassination story *unless* the CIA is able to provide specific information of a potential harm of release. (CIA acknowledges the presumption of release unless specific evidence is provided to the Review Board that harm to national security or to personal safety would result from the release of the employee name.)

FBI “Foreign Counterintelligence” Postponements

It is presumed that the FBI will, at least partially, carry over its post-appeal standards for disclosing “FCI” activities targeting Communist-bloc nations. To the extent that the HSCA subjects reflect “FCI” activities against other nations that have not been addressed by the Review Board in the “core” files, I would propose that the staff allow the FBI to redact direct discussion of such activities, unless the information in the proposed redaction meaningfully contributes to the understanding of the assassination.

FBI and CIA Foreign Liaison Postponements

The proposed criteria for these postponements would not, in the abstract, depart significantly from the Review Board’s current approach of releasing information received through liaison channels, while protecting direct acknowledgment of the source of the information. In practice, however, the staff would be more flexible in protecting text that implies, although may not unambiguously state, that a foreign government is the source of particular information. The less significant the information is to any assassination-related issue, the more the staff should be prepared to protect in the course of “negotiations.”

CIA Stations and Other Issues

Over the past two years the Review Board has established other guidelines that will continue to guide the review process, some of which will be outlined here. For CIA stations, all locations related to the Mexico City story will be released during the period 1960-1969. Outside of that window, they will be released on a case-by-case basis should the identity of the station be critical to understanding the assassination. All other stations, except for those identified as particularly sensitive, will be released from the period of the Kennedy administration until the publication of the Warren Commission report, (1/01/61 - 10/01/64). Outside of these windows, stations are postponed. Cable prefixes, dispatch prefixes, and field report prefixes are postponed or released according to the same windows as the stations to which they refer. CIA job titles also are redacted or opened along with the station at which the officer served.

Crypts are also reviewed according to guidelines established by the Board. All "LI" crypts, except those considered sensitive are released, as are "AM" crypts and U.S. government crypts. In other areas, only the digraph is protected. Again, the exception is sensitive crypts, which are protected in their entirety.

Surveillance methods are released unless political or operational sensitivity has been demonstrated. [We should probably add something on Board guidelines for review of cover issues.]

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