

# MEMORANDUM

August 22, 1995

ATTORNEY-CLIENT  
PRIVILEGED and CONFIDENTIAL

To: Tom Samoluk

From: Laura Denk

Subject: Suggested Responses to Joseph Backes August 12, 1995, Letter

## Government in the Sunshine Act Requests

(1) *Written statement as to why the August 28-29, 1995, Review Board meeting will be closed.*

The Review Board executed a notation voting form on which the Review Board members voted on the question of closing the August 28-29, 1995, Board meeting. The Review Board executed this form in accordance with § 1405.5(a) of its Government in the Sunshine Act regulations proposed at 60 Fed. Reg. 32,930 (1995) (to be codified at 36 C.F.R. ch. 14) (Sunshine Act regulations). This form states the reasons that the Board voted to close the meeting. The form was signed by David Marwell, the Executive Director of the Review Board.

The Review Board also published a *Federal Register* notice of the meeting pursuant to the requirements of the Government in the Sunshine Act, 5 U.S.C. § 552b.

Both of these documents are in the Review Board's Public Reading Room. The Review Board's Freedom of Information Act regulations, 36 C.F.R. § 1410.25(a), state in pertinent part:

Upon the request of any person, the Review Board shall make available for public inspection and copying any reasonably described Review Board record in the possession and control of the Review Board, *but not available through the Public Reading Room*, subject to the provisions of this part. (emphasis added).

(2) *Written statement from the General Counsel.*

The General Counsel's written statement, certifying his opinion that the August 28-29, 1995,

meeting may be closed to the public, will issue shortly before the Board meets on August 28, 1995. This statement will comply with § 1405.5(d) of the Review Board's Sunshine Act regulations.

(3) *Statement from the Presiding Officer.*

The Presiding Officer's statement setting forth the time, place, and persons present at the closed meeting will not issue until the Board meets on August 28-29, 1995, and the Presiding Officer can state accurately who is present at the meeting. This statement will comply with § 1405.5(e) of the Review Board's Sunshine Act regulations.

(4) *Complete transcript of the August 28 and 29, 1995, Board meeting.*

Section 1405.5(f) of the Review Board's Sunshine Act regulations requires the Review Board to maintain a complete transcript or electronic recording adequate to record fully the proceedings of each closed meeting (except a meeting closed pursuant to § 1405.4(h).) Section 1405.5(f) does not, however, require that the Review Board make such transcripts or recordings immediately available to the public -- except to the extent that the records would otherwise be available under the Freedom of Information Act, 5 U.S.C. § 552.

In any case, the Review Board does not have a transcript or electronic recording for the August 28-29, 1995, meeting, as that meeting is yet to occur.

### FOIA Requests

(1) *Name of Designated FOIA Officer.*

Laura Denk.

(2) *Whether there are Reading Room documents.*

Yes, the Review Board does maintain Public Reading Room documents.

(3) *Whether the Reading Room includes the items listed in § 1405.15(b)(1) of the June 30, 1995, Notice of Proposed Rulemaking Implementing the Freedom of Information Act.*

To the extent that such documents exist at this point in time, yes.

[If we can wait until Friday to mail the response to Backes, we can include a copy of the

Reading Room Index.]

- (4) *Copies of documents that the Board voted on at the July 17 and 18, 1995, meeting.*

Section 1410.10(a)(2) of the Review Board's Proposed Rules Implementing the Freedom of Information Act states:

Review Board records do not include: ... Documents owned by another Federal agency that the Review Board temporarily holds for the purpose of conducting its review under the President John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act). 60 Fed. Reg. 34,194 (1995) (to be codified at 36 C.F.R. § 1410.(a)(2)).

The CIA and FBI documents that you requested are not, therefore, Review Board records under the Freedom of Information Act. At this time, the originating agencies still hold title to the documents, even though the Review Board may be in possession of the documents or copies of the documents.