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DRAFT

ASSASSINATION RECORDS REVIEW BOARD

36 CFR Part 1400

*Guidance on Interpreting and Implementing the President John F. Kennedy*

*Assassination Records Collection Act of 1992.*

AGENCY: Assassination Records Review Board (ARRB).

ACTION: Final interpretive regulations.

SUMMARY: The ARRB is, after a publication of proposed interpretive regulations and the consideration of public comments received regarding them, issuing final regulations that provide guidance on the interpretation of certain terms defined in and on the implementation of certain provisions of the *President John F. Kennedy Assassination Records Collection Act of 1992*.

FOR FURTHER INFORMATION CONTACT: Sheryl L. Walter (General Counsel), (202) 724-0088.

SUPPLEMENTARY INFORMATION:

## *Background*

*The President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. 2107 note (as amended) (ARCA), established the President John F. Kennedy Assassination Records Collection (the JFK Assassination Records Collection) at the National Archives and Records Administration (NARA). In establishing a process for public disclosure of all records relating to the assassination, Congress created an independent agency within the executive branch, the Assassination Records Review Board (the Review Board), which consists of five citizens appointed by the President and confirmed by the Senate. Under the ARCA, the Review Board is empowered to decide "whether a record constitutes an assassination record." 44 U.S.C. 2107 note Sec. 7(i)(2)(A). Congress also intended that the Review Board "issue guidance to assist in articulating the scope or universe of assassination records." President John F. Kennedy Assassination Records Collection Act of 1992, S.Rep.102-328, 102d Cong., 2d Sess. (1992) at 21.*

*As the Supplementary Information that accompanied the proposed interpretive regulations published on February 8, 1995 stated, the Review Board's goal in issuing this guidance is*

*"to implement congressional intent that the JFK Collection contain 'the most comprehensive disclosure of records related to the assassination of President Kennedy.' Id. at 18. The Board is also mindful of Congress's instruction that the Board apply a "broad and encompassing" working definition of "assassination record" in order to*

*achieve the goal of assembling the fullest historical record on this tragic event in American history and on the investigations that were undertaken in the assassination's aftermath. The Board recognizes that many agencies have already begun to organize and review records responsive to the ARCA even before the Board was appointed and began its work. Nevertheless, the Board's aim is that this guidance will aid in the ultimate assembly and public disclosure of the fullest possible historical record on this tragedy and on subsequent investigations and inquiries into it."*

*60 Fed.Reg. 7506 (Feb. 8, 1995)*

### ***Notice and Comment***

*The Review Board sought public comment on its proposed interpretive regulations intended to provide guidance on the interpretation of the term assassination record, the intended scope of its exercise of authority to seek additional information or records, and its additional proposals for implementation of the ARCA.*

*The Review Board received written comments on the proposed interpretive regulations from agencies, state and local government and educational institutions, and individuals. Agencies providing written comments include the FBI, CIA and the National Archives. All comments were placed in the public reading room at the Review Board's offices and made available for inspection and copying by the*

public.

The Review Board found very helpful the thoughtful and, in many cases, very detailed comments submitted on the proposed interpretive regulations. All comments submitted were carefully studied and considered by the Review Board. Submitters made both technical and substantive suggestions; as described below in the section-by-section analysis many of these suggestions were incorporated in the final interpretive regulations as they appear here.

Several comments were received directed at the broad scope of the Review Board's proposed guidance and its inclusion of records not in the possession of federal agencies within the scope of terms defined in the ARCA. The Review Board considered those comments making a case for excluding all other records from the scope of the ARCA, but concluded that the terms of the ARCA as drafted by Congress preclude such a reading of the Review Board's responsibilities as defined by law. The broad scope of the legislation directs the Review Board to identify and make available to the public all documents that will enhance, enrich, and broaden the historical record of the assassination of President John F. Kennedy. The Review Board thus seeks through its interpretive regulations to fulfill Congress's "inten[t] and emphasis that the search and disclosure of records under this Act must go beyond" the records of previous commissions and committees established to investigate President Kennedy's assassination. S.Rep.102-328, supra at 21.

### **Section by Section Analysis**

### 1400.1 Scope of assassination record.

The Review Board received several comments addressed to the text of this section, some technical in nature and some more substantive. For example, the title of the section was revised based on public comment that the previous title was less precise. Other editing changes were for clarity.

Many comments focused on the language of subparagraph (a). In particular, many suggested that the Review Board amend its initially proposed language stating that an "assassination record" includes records "that may have led to the assassination." Comments from both government agencies and private researchers suggested, although in somewhat different ways, that in place of the words "may have led to" the Review Board substitute the phrase "reasonably related to." The Review Board agrees and adopts this change. The Review Board seeks to identify and preserve records not to support or refute any theory of the assassination of President Kennedy, although such theories may inform the Review Board's search for records reasonably related to the assassination, and believes that subparagraph (a) as now worded advances that effort.

Other suggested additions to this subparagraph and to subparagraph (b) were considered but rejected because the topics included in those suggestions were found already covered by the subparagraph's scope and thus were determined to be duplicative.

### 1400.2 Scope of additional records and information.

The title of this section was revised to conform to the title of section 1400.1 and additional clarifying changes also were made. A new subpart (6) was added to subparagraph (e) and a new subparagraph (f) was added as well after consideration of comments that noted the potential exclusion of certain records from the scope of this section as the proposed interpretive regulations were originally drafted. This section is intended to be used to obtain access to a wide variety of materials, classified and unclassified, which may not fall into the definition of "assassination record" but which will lead to the identification of assassination records.

1400.3 Sources of assassination records and additional records and information.

A new subparagraph was inserted after consideration of comments noting the potential exclusion of records created by individuals or corporations or obtained from sources other than those already identified in the previous subparagraphs. Other comments suggesting the inclusion of additional specific sources were considered but not included in the final version because they were determined already to be covered by existing subparagraphs of this section.

1400.4 Types of materials included in scope of assassination record and additional records and information.

The National Archives and Records Administration submitted comments objecting to the inclusion of "artifacts" in this section.

Other comments received strongly supported inclusion of this type of material in the term record. The Review Board carefully considered NARA's comments as contained in its written submission and as presented in oral testimony by NARA representatives at a public hearing of the Review Board held on December 14, 1994. However, the Review Board concluded that this section should appear in the final version of the interpretive regulations without change.

1400.5 Requirement that assassination records be released in their entirety.

This section is intended to provide guidance to agencies that they are to produce for the Review Board's review records in their entireties and, except in rare instances, withhold information in documents only under the postponement provisions of Section 6 of the ARCA. The purpose of requiring that records be produced in their entireties is to ensure that context and integrity of the records is preserved.

There may be records responsive to the provisions of the ARCA that are many hundreds or thousands of pages long but which contain material reasonably related to the assassination or qualify as additional records or information only in a very small portion of that record. In such cases, if an agency reasonably believes that review of the entire record for postponement determinations would not further the disclosure purposes of the ARCA, the agency may request that the

Review Board allow the agency to process under the ARCA only the portion that relates to the ARCA.

However, in such cases the Review Board shall retain sole discretion to determine whether review for inclusion in the JFK Assassination Records Collection of a portion of the record will fulfill the purposes the ARCA or whether the entire record must be processed as the ARCA requires.

1400.6 Originals and copies.

Why we're treating textual material differently

Can accept a copy if believes the original should reside somewhere else.

1400.7 Additional guidance.

1400.8 Implementing the ARCA -- Catalog of Assassination Records.

[David -- do you want to take a shot at writing this section?]

### *List of Subjects in 36 CFR Part 1400*

*Administrative practice and procedure, Archives and records.*

*Accordingly, the Assassination Records Review Board hereby proposes to establish a new chapter XIV in title 36 of the Code of Federal Regulations to read as follows:*

#### *CHAPTER XIV -- ASSASSINATION RECORDS REVIEW BOARD*

##### *Part 1400 -- GUIDANCE FOR INTERPRETATION AND IMPLEMENTATION OF THE PRESIDENT JOHN F. KENNEDY ASSASSINATION RECORDS COLLECTION ACT OF 1992" (ARCA)*

*Sec.*

*1400.1 Scope of assassination record.*

*1400.2 Scope of additional records and information.*

*1400.3 Sources of assassination records and additional records and information.*

*1400.4 Types of materials included in scope of assassination record and additional records and information.*

*1400.5 Requirement that assassination records be released in their entirety.*

*1400.6 Originals and copies.*

*1400.7 Additional guidance.*

*1400.8 Implementing the ARCA -- Catalog of Assassination Records.*

Authority: 44 U.S.C. 2107 note.

§ 1400.1 *Scope of assassination record.*

- (a) *An assassination record includes, but is not limited to, all records, public and private, regardless of how labeled or identified, that document, describe, report on, analyze, or interpret activities, persons, or events reasonably related to the assassination of President John F. Kennedy and investigations of or inquiries into the assassination.*
- (b) *An assassination record further includes, without limitation:*
- (1) *All records as defined in Sec. 3(2) of the ARCA;*
  - (2) *All records collected by or segregated by all federal, state, and local government agencies in conjunction with any investigation or analysis of or inquiry into the assassination of President Kennedy (for example, any intra-agency investigation or analysis of or inquiry into the assassination; any inter-agency communication regarding the assassination; any request by the House Select Committee on Assassinations to collect documents and other materials; or any inter- or intra-agency collection or segregation of documents and other materials);*

- (3) *Other records or groups of records listed in the Catalog of Assassination Records, as described in §1400.8 of this chapter.*

§1400.2 *Scope of additional records and information.*

*The term additional records and information includes:*

- (a) *All documents used by government offices and agencies during their declassification review of assassination records as well as all other documents, indices, and other material (including but not limited to those that disclose cryptonyms, code names, or other identifiers that appear in assassination records) that the Review Board has a reasonable basis to believe may constitute an assassination record or would assist in the evaluation or interpretation of an assassination record. The Review Board will identify in writing those records and other materials it intends to seek under this section.*
- (b) *All training manuals, instructional materials, and guidelines created or used by the agencies in furtherance of their review of assassination records.*
- (c) *All records, lists, and documents describing the procedure by which the agencies identified or selected assassination records for review.*
- (d) *Organizational charts of government agencies.*

- (e) *Records necessary and sufficient to describe the agency's:*
- (1) *Records policies and schedules;*
  - (2) *Filing systems and organization;*
  - (3) *Storage facilities and locations;*
  - (4) *Indexing symbols, marks, codes, instructions, guidelines, methods and procedures;*
  - (5) *Search methods and procedures used in the performance of the agencies' duties; and*
  - (6) *Reclassification to a higher level or destruction of assassination records.*
- (f) *Any other record that does not fall within the scope of assassination record as described in §1400.1, but which has the potential to enhance, enrich, and broaden the historical record of the assassination.*

§1400.3 *Sources of assassination records and additional records and information.*

*Assassination records and additional records and information may be located at, or under the control of, without limitation:*

- (a) *Agencies, offices, and entities of the executive, legislative, and judicial branches of the federal government;*
- (b) *Agencies, offices, and entities of the executive, legislative, and judicial branches of state and local governments;*
- (c) *Record repositories and archives of federal, state, and local governments, including presidential libraries;*
- (d) *Record repositories and archives of universities, libraries, historical societies, and other similar organizations;*
- (e) *Individuals who possess such records by virtue of service with a government agency, office, or entity;*
- (f) *Persons, including individuals and corporations, who have obtained such records from sources identified in subparagraphs (a) through (e) of this section;*
- (g) *Person, including individuals or corporations, who have themselves created or have obtained such records from sources other than those identified in subparagraphs (a) through (e) of this section;*
- (h) *Federal, state, and local courts where such records are being held under seal; or*
- (i) *Foreign governments.*

*§1400.4 Types of materials included in scope of assassination record and additional records and information.*

*The term record in assassination record and additional records and information includes, for purposes of interpreting and implementing the ARCA:*

*(a) papers, maps, and other documentary material;*

*(b) photographs;*

*(c) motion pictures;*

*(d) sound and video recordings;*

*(e) machine readable information in any form; and*

*(f) artifacts.*

*§1400.5 Requirement that assassination records be released in their entirety.*

*An assassination record shall be disclosed in its entirety except for portions specifically postponed pursuant to the grounds for postponement of public disclosure of records established in Sec. 6 of the ARCA, and no portions of any assassination records shall be withheld from public disclosure solely on grounds of non-relevance unless, in the Assassination Records Review Board's sole discretion, release of part of a record is sufficient to comply with the intent and*

*purposes of the ARCA.*

*§1400.6 Originals and copies.*

*(a) For purposes of determining whether originals or copies of assassination*

*records will be made part of the President John F. Kennedy Assassination Records Collection (the JFK Records Assassination Records Collection) established under the ARCA, the following shall apply:*

*(1) In the case of papers, maps, and other documentary materials, the*

*Assassination Records Review Board may determine that record copies of Government records, either the signed original, original production or a reproduction that has been treated as the official record maintained to chronicle government functions or activities may be placed in the JFK Assassination Records Collection;*

*(2) In the case of other papers, maps, and other documentary material, the Assassination Records Review Board may determine that a true and accurate copy in lieu of the original may be placed in the JFK Records Assassination Records Collection;*

*(3) In the case of photographs, the original negative, if available, otherwise, the earliest generation print that is a true and accurate copy may be placed in the JFK Records*

*Assassination Records Collection may be placed in the JFK Records Assassination Records Collection;*

- (4) In the case of motion pictures, the camera original, if available, otherwise, the earliest generation print that is a true and accurate copy may be placed in the JFK Records Assassination Records Collection;*
- (5) In the case of sound and video recordings, the original recording, if available, otherwise, the earliest generation copy that is a true and accurate copy may be placed in the JFK Assassination Records Collection;*
- (6) In the case of machine-readable information, a true and accurate copy of the original (duplicating all information contained in the original and in a format that permits retrieval of the information) may be placed in the JFK Assassination Records Collection; and*
- (7) In the case of artifacts, the original objects themselves may be placed in the JFK Assassination Records Collection.*

*(b) To the extent records from foreign governments are included in the JFK*

*Assassination Records Collection, copies of the original records shall be*

*sufficient for inclusion in the collection.*

*(c) In cases where a copy, as defined in paragraph (a) of this*

section above, is authorized by the Review Board to be included in the JFK Records Assassination Records Collection the Review Board may, at its discretion if it determines it to be necessary to ensure the integrity of the JFK Assassination Records Collection, require a certified copy. In cases where an original, as defined in paragraph (a) of this section, is required for inclusion in the JFK Records Assassination Records Collection the Review Board may, at its discretion, accept the best available copy. In such cases that records included in the collection, whether originals or copies, contain illegible portions, such records shall have attached thereto a certified transcription of the illegible language to the extent practicable.

(d) For purposes of implementing the ARCA, the term "copy" means a true and accurate photocopy duplication by a means appropriate to the medium of the original record that preserves and displays the integrity of the record and the information contained in it.

(e) Nothing in this section shall be interpreted to suggest that additional copies of any assassination records contained in the JFK Records Assassination Records Collection are not also assassination records that, at the Review Board's discretion, may also be placed in the JFK Assassination Records Collection.

(f) Nothing in this section shall be interpreted to prevent or preclude copies of any assassination records, and particularly assassination records in audiovisual or machine readable formats, from being made from time to time in the professional judgment of and at the discretion of the National Archives and Records Administration for purposes of preservation or reformatting to

conform to different hardware and/or software requirements.

§1400.7 Additional guidance.

(a) A government agency, office, or entity includes, for purposes of interpreting and implementing the ARCA, all current, past, and former departments, agencies, offices, divisions, foreign offices, bureaus, and deliberative bodies of any federal, state, or local government and includes all inter- or intra- agency working groups, committees, and meetings that possess or created records relating to the assassination of President John F. Kennedy.

(b) The inclusion of artifacts in the scope of the term assassination record is understood to apply solely for purposes of establishing the JFK Assassination Records Collection and for fully implementing the terms of the ARCA and has no direct or indirect bearing on the interpretation or implementation of any other statute or regulation.

(c) In the case of artifacts deemed to be assassination records and included in the JFK Assassination Records Collection, the provision to the public of photographs, drawings, or similar materials depicting the artifacts shall be sufficient to comply with the ARCA's requirement that copies of assassination records be provided to the public upon request. Additional display of or examination by the public of artifacts in the JFK Assassination Records Collection shall occur under the terms and conditions established by the National Archives and Records Administration to ensure their preservation and protection for posterity.

(d) The terms and, or, any, all, and the plural and singular forms of nouns shall be understood in their broadest and most inclusive sense and shall not be understood to be terms of limitation.

(e) Unless the Review Board in its sole discretion directs otherwise, records that are identified with respect to a particular person shall include all records relating to that person that use or reflect their true name or any other name, pseudonym, codeword, symbol, number, cryptonym or alias used to identify that person.

(f) Unless the Review Board in its sole discretion directs otherwise, records that are identified by the Review Board with respect to a particular operation or program shall include all records pertaining to that program by any other name, pseudonym, codeword, symbol, number or cryptonym.

#### §1400.8 Implementing the ARCA -- Catalog of Assassination Records.

(a) A Catalog of Assassination Records (COAR) shall be created as the official listing of all records determined by the Review Board to meet the definition of assassination record other than those initially identified by Government agencies as assassination records.

- (b) *Notice of all decisions to include records in the COAR will be published in the Federal Register within 30 days of the decision.*
  
- (c) *In listing records or groups of records in the COAR, the Review Board must determine that the record or group of records will more likely than not enhance, enrich, and broaden the historical record of the assassination.*

*Dated: May xx, 1995*

*David G. Marwell  
Executive Director  
Assassination Records Review Board*