



NATIONAL ARCHIVES *and* RECORDS ADMINISTRATION
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DATE: March 29, 2018

FROM: James Springs *James Springs*
Inspector General

TO: David S. Ferriero
Archivist of the United States

SUBJECT: *Special Report No. 18-SR-07, NARA's Compliance with The President John F. Kennedy Assassination Records Collection Act of 1992*

The purpose of this Special Report is to inform you of the progress of the National Archives and Records Administration's (NARA's) compliance with The President John F. Kennedy Assassination Records Collection Act of 1992 (the JFK Act). We primarily focused on NARA's preparation and planning to fulfill the requirement to publicly disclose in full each assassination record in the John F. Kennedy Assassination Records Collection (the JFK Collection) no later than October 26, 2017. However, on October 26, 2017 President Donald J. Trump issued a memorandum allowing information within records that agencies have proposed for continued postponement of full disclosure under the JFK Act to be temporarily withheld from full public disclosure until April 26, 2018. Agencies had until March 12, 2018 to re-review the information to identify what may be publically disclosed without harm to the military defense, intelligence operations, law enforcement, or conduct of foreign relations.

During 2017, NARA released almost 35,000 documents from the JFK Collection. Approximately 16,000 of these documents were released in full, while the remainder included documents released with redactions. These documents were made available to the public over six releases between July and December 2017. The review and release of these documents was done in accordance with the JFK Act and President Trump's October 26, 2017 memorandum on the release of JFK documents.

Background

On November 22, 1963, as President John F. Kennedy's motorcade traveled through Dealey Plaza in downtown Dallas, Texas, he was shot and suffered a massive head wound. Doctors at Parkland Memorial Hospital in Dallas pronounced President Kennedy dead shortly thereafter. Dallas police officers arrested and charged Lee Harvey Oswald with assassinating President Kennedy. On November 24, 1963, Oswald was shot and killed by Jack Ruby during the Dallas Police Department's transfer of Oswald from the city jail to the county jail. Jack Ruby was tried

and convicted of Oswald's murder in March 1964. In October 1966, the Texas Court of Criminal Appeals reversed the verdict and ordered a new trial. Ruby died of cancer three months later before his new trial began. Ruby maintained he was not involved in the assassination of President Kennedy and he had not known Oswald prior to hearing his name in connection with the assassination. Ruby claimed his fury over the assassination led him to kill Oswald. Aside from the assassination investigations the Dallas police, the Federal Bureau of Investigations (FBI), and the Secret Service conducted, President Lyndon B. Johnson immediately established the President's Commission to Investigate the Assassination of President Kennedy. Chief Justice of the U.S. Supreme Court Earl Warren headed this effort and it became commonly known as the Warren Commission. The Warren Commission Report concluded Lee Harvey Oswald acted alone and shot President Kennedy from a sniper's nest on the sixth floor of his workplace, the Texas School Book Depository. The Warren Commission conducted some of its investigations in secret and sealed many of its records. These facts resulted in public skepticism about the Warren Commission's conclusion. Subsequently, other federal entities conducted partial or complete reinvestigations of the assassination. The most significant of these reinvestigations was the House Select Committee on Assassinations (HSCA), which concluded in 1979 that President Kennedy's death was the result of a probable conspiracy. Numerous records of previous investigative bodies, which had each investigated aspects of the assassination, such as the Warren Commission, the Church Committee, and the HSCA were secret. Yet members of these commissions reached conclusions based on their investigative records. According to the Assassination Records Review Board (ARRB), the American public lost faith when it could not see the very documents whose contents led to these conclusions.

The National Archives, part of the General Services Administration at the time, took custody of the Warren Commission's records on November 23, 1964. Most of the records were available to the public soon after their accessioning.¹ Through periodic reviews and researcher requests through the Freedom of Information Act (FOIA), by the early 1990s, only two percent of the Warren Commission's records remained withheld in full or in part.

Other records concerning the assassination remained in the custody of different agencies of the executive branch, in particular the FBI and the Central Intelligence Agency (CIA). Using FOIA, researchers requested access to records compiled by the FBI as part of their investigations of the assassination, and thousands of pages of additional records were released during the 1970s and 1980s. However, many of the documents received by researchers under FOIA were substantially redacted. In addition, the records of certain investigative bodies, which had each investigated aspects of the assassination, remained closed to the public because they were outside FOIA's jurisdiction.

¹ Accessioning is the process of transferring physical and legal custody of permanent records from federal agencies to NARA.

The JFK Act

Legislation was introduced in Congress in early 1992 to create a review process outside of FOIA and specifically designed to speed the release of assassination records. President George H.W. Bush signed the bill on October 26, 1992, and it became Public Law 102-526, the President John F. Kennedy Assassination Records Collection Act of 1992.

The JFK Act is a unique statute. According to the ARRB, the intent of the JFK Act is to secure the public release of records relating to President Kennedy's assassination and, in doing so, assure the public that the federal government was not withholding material information about this tragic event. The JFK Act stated that all records concerning the assassination "should carry a presumption of immediate disclosure." To achieve this goal, the JFK Act created two related entities: the JFK Collection and the ARRB. The JFK Collection, under the supervision of NARA, would serve as a central repository for all records of the assassination of President Kennedy. The ARRB was an independent agency composed of five members and their staff with the responsibility of overseeing agency searches for assassination records. Among its other powers, the ARRB had the final authority (subject to the President of the United States) to approve or reject agency proposals for withholding information. It has been claimed it was this power that the architects of the JFK Act hoped would result in more information being released than had been under FOIA.

One of the first tasks the ARRB set for itself was further defining an assassination record. The JFK Act had defined an assassination record as a record "related to the assassination of President John F. Kennedy, that was created or made available for use by, obtained by, or otherwise came into possession of" an extensive list of Legislative, Executive, State, and local government entities. These included the records of all previous investigations (including the Warren Commission and the HSCA), the National Archives, and any agency in the executive branch.

"An assassination record, the ARRB decided,

[included], 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 as reasonably related to the assassination of President John F. Kennedy and investigations or inquiries into the assassination."

After formulating its definition of an assassination record, the ARRB began its most important work, reviewing the information agencies wanted to postpone rather than release. In their early meetings in 1995, ARRB members looked at each document proposed for postponement, either in full or in part, along with the agency justification for postponement. The members then voted on each document—whether to accept the agency's proposed decision or request more information. Eventually, the ARRB delegated some routine decision making to its staff. The ARRB finished its work on September 30, 1998, issued a final report, and transferred all of its

records to NARA. Because of the ARRB's work, the JFK Collection is not only important for researchers of the assassination, but a valuable source for researchers interested in different aspects of early 1960s Cold War America.

According to the JFK Act, each assassination record shall be publicly disclosed in full, and available in the Collection no later than 25 years after the date of enactment of the JFK Act, unless the President of the United States authorizes further withholding for specific reasons. That date was October 26, 2017. Agencies who wanted their information withheld for longer, needed to file a formal appeal with the President of the United States.

There are categories of records in the JFK Collection that are not scheduled to be released in the near future, if at all. Section 5 of the JFK Act states "[e]ach assassination record shall be publicly disclosed in full" 25 years after the enactment of the JFK Act. However, that mandate is contained within a subsection titled "Periodic Review of Postponed Assassination Records." Accordingly, NARA's interpretation, agreed to by other governmental offices, has been that the 25 year mandatory release only applies to records that have been "postponed" under Section 6, "Grounds for Postponement of Public Disclosure of Records." Some records have not been publicly released for reasons outside of the grounds for postponement under Section 6. Sections 10 and 11 of the JFK Act discuss materials held under court seal, grand jury information, records held under section 6103 of the Internal Revenue Code (tax return information), and records covered by a specific deed of gift. Some records, or portions of records, that fit into these categories have been identified and have not been released. For all other records, the President of the United States, who has final appeal authority, will determine how long records stay withheld after 2017.

The JFK Act provided that provisions of the JFK Act pertaining to the operation of the ARRB ceased to be effective when the term of the Board expired. However, all remaining provisions of the JFK Act continue in force: "The remaining provisions of this Act shall continue in effect until such time as the Archivist certifies to the President and the Congress that all assassination records have been made available to the public in accordance with this Act." This provision is significant because it underscores the continuing obligation of federal agencies to release records on the assassination after the ARRB's term expires.

NARA's Actions Related to the JFK Act

As required by the JFK Act, NARA established the JFK Collection in November 1992 which consists of more than 319,000 documents containing over 5 million pages of records. The majority of documents in the JFK Collection (i.e., 88 percent) have been open in full and released to the public since the late 1990s, while the remaining 12 percent included documents released with redactions or withheld in full. Currently, 21,890 documents have not been fully released which represents about 7 percent of the collection.

NARA's planning for the October 2017 JFK record release started in earnest in January 2014. NARA's Special Access and Freedom of Information Act Staff put together a team of archivists to work on the release and a project plan was developed, which was used to guide the team's work. The team located and scanned thousands of documents that had previously been released with redactions or withheld in full from the collection. Once scanned, they reviewed the documents to identify which agencies still held equities² in each document. NARA does not have declassification authority, so if an agency is protecting information, such as the name of a field agent, only that agency can release the equity (i.e., determine the document can be shared with the name visible). From December 2014 to May 2015, NARA sent notification letters to all agencies with equities in the withheld materials to inform them, that absent a successful appeal to the President of the United States, NARA would be releasing the records as of October 2017. The agencies were also provided with spreadsheets listing the documents proposed for release.

NARA staff attended multi-agency meetings hosted by the National Security Council to urge agencies to review the records in accordance with the guidelines provided in the JFK Act. In addition, the team assisted agencies in their review, even hosting staff from one agency for five months and providing access to their records in the collection.

In February 2017, follow-up letters were sent out requesting a summary of agencies review efforts to date and asking if there were any records that can be released immediately. The letter further stated the JFK Act does not require NARA to wait until the deadline to release documents and NARA would prefer to release records on a rolling basis as soon as possible.

NARA started rolling releases of previously redacted JFK records in July 2017. In July and October 2017, NARA released in full about 6,700 documents to the public. See Table No. 1 below that summarizes NARA's six releases of JFK records in 2017.

However, based on requests from executive offices and agencies, President Trump allowed the temporary withholding of certain information that would harm national security, law enforcement, or foreign affairs. On October 26, 2017, President Trump issued a memorandum that directed agencies to re-review each and every one of their redactions over the next 180 days. As part of the review process, agency heads are directed to be extremely circumspect in recommending any further postponement of information in the records. Agency heads were required to report to the Archivist of the United States (the Archivist) by March 12, 2018 any specific information within particular records that meets the standard for continued postponement under the JFK Act. The Archivist then recommended to the President of the United States on March 26, 2018 whether this information warrants continued withholding after April 26, 2018.

² Equities are information in a document that are classified. The equity may be information identifying a classified source or method.

After October 26, 2017, NARA had four additional releases in 2017 in which over 28,000 JFK assassination documents were released. These include documents released in full, as well documents that were previously withheld in part, or withheld in full, that are being released with redactions.

Table No. 1: NARA’s Release of JFK Assassination Documents in 2017

Release No.	Release Date	Documents Released
1	July 24, 2017	3,810
2	October 26, 2017	2,891
3	November 3, 2017	676
4	November 9, 2017	13,213
5	November 17, 2017	10,744
6	December 15, 2017	3,539
Total		34,873

In January 2018, NARA issued an additional letter to agencies with equities that included a list of every document not yet released in full by that agency. NARA requested an update with the status of each document. NARA also requested a new redacted form, prepared for public release, for any document continuing to be withheld, where the redactions have changed from the releases in 2017. The letter also stated the Archivist will consider each proposed withholding using the guidelines provided in President Trump’s October 26, 2017 memorandum.

Of the 21,890 records that have not been released in full, many of these records were released in 2017 with redactions. Agencies with equities were to report back to NARA by March 12, 2018 with recommendations on what records can be released with reduced redactions or released in full. We will continue to monitor NARA’s work related to the continued release of JFK assassination documents.

As with all OIG products, we will determine what information is publicly posted on our website from the attached Special Report. Should you or management have any redaction suggestions based on FOIA exemptions, please submit them to my counsel within one week from the date of this report. Should we receive no response from you or management by this timeframe, we will interpret that as confirmation NARA does not desire any redactions to the posted Special Report.

Consistent with our responsibility under the *Inspector General Act, as amended*, we may provide copies of our Special Report to congressional committees with oversight responsibility over the National Archives and Records Administration.

Please call me with any questions, or your staff may contact Jewel Butler, Assistant Inspector General for Audits, at (301) 837-3000.

cc: Deputy Archivist of the United States
Chief Operating Officer
Accountability
United States House Committee on Oversight and Government Reform
Senate Homeland Security and Governmental Affairs Committee