

New Note

NOTE FOR: [redacted] @ DCI
FROM: [redacted]
DATE: 02/27/95 06:02:46 PM
SUBJECT: JFK Records

This is in response to your request that I review ASAP the proposed regulations by the JFK Assassination Records Review Board.

I see Sheryl Walters hand very much in evidence here. I see from the attachment that she is the Board's GC.

Like you, I am very concerned about the breadth of the reg's definitions. The key to keep in mind is the statutory authority for the Board. I would argue that the definition of "assassination record" in the statute (44 U.S.C. section 2107 note; section 3(2) of the Act) is more limited than the reg. The statute defines an assassination record as one "related" to the assassination of JFK. Thus, when section 1400.2(d) and (e) of the reg authorize Board access to organizational charts of governmental agencies and records necessary and sufficient to describe the agency's records policies and schedules, filing systems and organization, and storage facilities and locations, I would argue that such information is way too far afield. There is no way we can allow the Board to have access to this information, which in any event is prohibited by section 403g from disclosure notwithstanding any other law.

The same issue arises with respect to section 1400.7(d) of the reg that proposes to include in the definition of record any records for a person by another name or personal identifier. This would appear to authorize Board access to all information about an agent who may have only been tangentially involved in the assassination but whose crypt is given in many other unrelated documents about unrelated operations. Talk about your camel's nose under the tent!

Finally, section 1400.5 of the reg raises an old dog of an issue. The National Security Archive (Sheryl's old employer) has been fighting for a long time in FOIA litigation that the FOIA refers to records and that therefore all information in a responsive record must be released unless otherwise exempt. There is no FOIA exemption, they argue, for non-responsive material in a record. This is a big problem for multi-topic documents, such as the NID. We, of course, argue that agencies are only required to process that which is asked for and delete non-responsive material as unrequested. The proposed reg would mean that the Board would have access to all information in a document about several unrelated operations or events if that document even mentioned the assassination or anything related to it. Again, the camel's nose.

CC: [redacted] @ DCI

ADMINISTRATIVE - INTERNAL USE ONLY

CSI-0316/95
16 February 1995

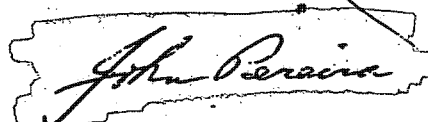
NOTE FOR: D/IM/ADDA/IS
DCI/IRO
DA/IRO
DI/IRO
DO/IRO
DS&T/IRO
OGC (Bob Eatinger)
~~DD/OCA~~
C/IP&CRD
C/RDP/MSG/OIT

FROM: John Pereira
Historical Review Group

SUBJECT: JFK Assassination Records
Proposed Regulations

1. Attached for your review and comment is a copy of proposed regulations prepared by the JFK Assassination Records Review Board. The regulations focus on the definition of "assassination record", which is very broad. The possibility of requiring additional records searches is raised.

2. The Board plans to discuss the regulations at its next meeting on 6-7 March, so it would be helpful to give the Board our input in advance of that meeting. Please provide Barry Harrelson (x30292) or me (x30373) with your comments by 1 March.



John F. Pereira

Attachment

753-243-8343

facsimile

TRANSMITTAL

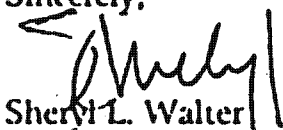
to: John Percira, CIA Historical Review Program
fax #: (703) 243-8343
re: ARRB proposed interpretive regulations
date: February 9, 1995
pages: 4, including cover sheet.

Dear John:

Following this cover sheet is a courtesy copy of the Assassination Records Review Board's proposed interpretive regulations, published yesterday in the Federal Register. The proposed regulations include guidance on interpretation of the scope of certain provisions of the Assassination Records Collection Act, including the terms "assassination record" and "additional records and information." The Board is soliciting comment from all interested parties and would welcome any comments that the CIA may have. (The comment period is 30 days; the deadline is March 10.)

If you have any questions or need any additional information, please don't hesitate to give me a call on my direct line or at our main number, 724-0088.

Sincerely,



Sheryl L. Walter
General Counsel

From the desk of:

Sheryl L. Walter
General Counsel
Assassination Records Review Board
600 E Street, NW, Second Floor
Washington, D.C. 20530

(202) 724-0915
Fax: (202) 724-0457

(B) For dependents of active duty members in pay grades of E-5 and above, \$25; and,

(C) For retirees and their dependents, \$25.

(vi) The copayment for prescription drugs per prescription, for a maximum 30-day supply, is as follows:

(A) For dependents of active duty members in pay grades E-1 through E-4, \$5;

(B) For dependents of active duty members in pay grades of E-5 and above, \$5; and,

(C) For retirees and their dependents, \$9.

(vii) The copayment for ambulance services is as follows:

(A) For dependents of active duty members in pay grades of E-1 through E-4, \$10;

(B) For dependents of active duty members in pay grades of E-5 and above, \$15; and,

(C) For retirees and their dependents, \$20.

(e) *Inpatient cost sharing requirements under the Uniform HMO Benefit.*—(1) *In general.* In lieu of usual CHAMPUS cost sharing requirements (see § 199.4(f)), special cost sharing amounts are required. The specific requirements shall be uniform and shall be published as a notice annually by the Assistant Secretary of Defense (Health Affairs)

(2) *Structure of cost sharing.* For services other than mental illness or substance use treatment, there is a nominal copayment for active duty dependents and for retired members, dependents of retired members, and survivors. For inpatient mental health and substance use treatment, a separate per day charge is established.

(3) *Amount of inpatient cost sharing requirements.* Beginning in fiscal year 1995, the inpatient cost sharing requirements are as follows:

(i) For acute care admissions and other non-mental health/substance use treatment admissions, the per diem charge is as follows, with a minimum charge of \$25 per admission:

(A) For dependents of active duty members in pay grades E-1 through E-4, \$11;

(B) For dependents of active duty members in pay grades of E-5 and above, \$11; and,

(C) For retirees and their dependents, \$11.

(ii) For mental health/substance use treatment admissions, and for partial hospitalization services, the per diem charge is as follows, with a minimum charge of \$25 per admission:

(A) For dependents of active duty members in pay grades E-1 through E-4, \$20;

(B) For dependents of active duty members in pay grades of E-5 and above, \$20; and,

(C) For retirees and their dependents, \$40.

(f) *Updates.* The enrollment fees for fiscal year 1995 set under paragraph (c) of this section and the per services specific dollar amounts for fiscal year 1995 set under paragraphs (d) and (e) of this section may be updated for subsequent years to the extent necessary to maintain compliance with statutory requirements pertaining to government costs. This updating does not apply to cost sharing that is expressed as a percentage of allowable charges; these percentages will remain unchanged.

(g) *Applicability of the Uniform HMO Benefit to Uniformed Services Treatment Facilities Managed Care Program.* The provisions of this section concerning the Uniform HMO Benefit shall apply to the Uniformed Services Treatment Facilities Managed Care Program, effective October 1, 1995. Under that program, non-CHAMPUS eligible beneficiaries have the same payment responsibilities as CHAMPUS-eligible beneficiaries.

Dated: February 2, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95-3028 Filed 2-7-95; 8 45 am] BILLING CODE 5000-04-01

ASSASSINATION RECORDS REVIEW BOARD

38 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: Proposed Interpretive regulation.

SUMMARY: The ARRB proposes to issue regulations providing guidance on the interpretation of certain terms defined in and the implementation of the President John F. Kennedy Assassination Records Collection Act of 1992.

DATES: To be considered, comments must be received on or before March 10, 1995.

ADDRESSES: Comments should be mailed to the Assassination Records Review Board at 600 E Street, NW, Second floor, Washington, D.C. 20530 or delivered in person to that address

between the hours of 9:30 a.m. and 4:30 p.m., Monday through Friday (except legal holidays). Comments may also be faxed to the Board at (202) 724-0457. Comments received may be inspected in the Board's public reading room, located at the address shown above, between 10 a.m. and 3 p.m. Monday through Friday (except legal holidays). Persons wishing to inspect comments in the Board's public reading room should call the Board's office beforehand at (202) 724-0088 for further information.

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 Collection) at the National Archives and Records Administration (NARA). In establishing the 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 Board), which consists of five citizens appointed by the President. Under the statute, the Board is empowered to decide "whether a record constitutes an assassination record." 44 U.S.C. 2107 note, Sec. 7(i)(2)(A). Congress further made clear its intent that the 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.

In constructing the proposed guidance set out here, the Board seeks 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.

The Board's proposed guidance is designed to help government agencies and the Board 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 Board seeks through this guidance to fulfill Congress's "intent(s) 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. *Id.* at 21. The Board also seeks to provide notice of the scope of its intended exercise of authority to seek additional information or records in order to fulfill its functions and responsibilities under the ARCA.

In addition, the Board proposes to create a mechanism to facilitate the Board's ongoing work and to further ensure future public access to the broadest possible historical record. This mechanism will be known as the "Catalog of Assassination Records" (COAR). The COAR is intended to be an official listing of all records determined by the Board to meet the definition of "assassination record" and included in the JFK Collection.

Request for Comments

The Board seeks 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.

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)

- Soc.
 - 1400.1 Interpretation of assassination record.
 - 1400.2 Interpretation 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 Interpretation 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, analyze, or interpret activities and events that may have led to the assassination of President John F. Kennedy; the assassination itself; and investigations of or inquiries into the assassination.

(b) An assassination record further includes, without limitation:

(1) All records as defined in Soc. 3(2) of the ARCA;

(2) All records called 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 Interpretation of additional records and information.

The term *additional information and records* includes:

(a) All documents used by government offices and agencies during their declassification review of

assassination records as well as all other documents, indices, records, and other material that disclose cryptonyms, code names, or other identification material in assassination records.

(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; and
- (3) Storage facilities and locations.

§ 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 paragraphs (a) through (e) of this section;

(g) Federal, state, and local courts where such records are being held under seal; or

(h) 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

Handwritten notes:
111
453g

(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 section 6 of the ARCA, and no portions of any assassination records shall be withheld from public disclosure solely on grounds of non-relevance.

§ 1400.6 Originals and copies.

(a) For purposes of determining whether originals or copies of assassination records may be made part of the President John F. Kennedy Assassination Records Collection (the JFK Records Collection) to be established under the ARCA:

(1) In the case of papers, maps, and other documentary material, the Assassination Records Review Board (the Board) may determine that a true and accurate copy of the original is sufficient;

(2) In the case of photographs, the term record means the original negative if available, otherwise, the earliest generation print;

(3) In the case of motion pictures, the term record means the camera original if available, otherwise, the earliest generation print.

(4) In the case of sound and video recordings, the term record means the original recording, if available, otherwise, the earliest generation copy;

(5) In the case of machine-readable information, the Board may determine that a true and accurate copy of the original is sufficient; and

(6) Artifacts means the original object itself.

(b) In cases where a copy, as defined in paragraph (a) of this section is authorized by the Board to be included in the JFK Records Collection the Board may, at its discretion, 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 Collection the Board may, at its discretion, accept the best available copy.

§ 1400.7 Additional guidance.

(a) A government agency, office, or entity includes, for purposes of interpreting and implementing the ARCA, all 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 President John F. Kennedy 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 John F. Kennedy Assassination Records Collection, 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. Other display or examination by the public of artifacts in the John F. Kennedy Assassination Records Collection shall occur under terms and conditions established by the National Archives and Records Administration that are adequate to preserve and protect the artifacts 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. Any records identified with respect to a particular person also includes any records for that person by any other name, pseudonym, codeword, symbol, number, cryptonym or alias. Any record described with respect to an operation or program includes any record 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 Board to meet the definition of assassination record.

(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 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: February 3, 1995.

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

[FR Doc. 95-3112 Filed 2-7-95; 8:45 am]

BILLING CODE 4420-TD-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 93

[FRL-5149-9]

Transportation Conformity Rule Amendments: Transition to the Control Strategy Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to permanently align the timing of certain transportation conformity consequences with the imposition of Clean Air Act highway sanctions. For ozone nonattainment areas with an incomplete 15% emissions-reduction state implementation plan with a protective finding; incomplete ozone attainment/3% rate-of-progress plan; or finding of failure to submit an ozone attainment/3% rate-of-progress plan, and areas whose control strategy implementation plan for ozone, carbon monoxide, particulate matter, or nitrogen dioxide is disapproved with a protective finding, the conformity status of the transportation plan and program would not lapse as a result of such failure until highway sanctions for such failure are effective under other Clean Air Act sections.

This action would delay the lapse in conformity status, which would otherwise prevent approval of new highway and transit projects, and allow States more time to prevent the lapse by submitting complete ozone implementation plans.

EPA has published in the final rule section of this Federal Register a similar interim final rule which takes effect immediately and applies for six months. This proposal would apply the provisions of the interim final rule permanently.

DATES: Comments on this action must be received by March 10, 1995. A public hearing will be held at 10:30 a.m. on February 22, 1995 in Washington, DC.

ADDRESSES: Interested parties may submit written comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Attention: Docket No. A-95-02, 401 M Street, SW., Washington, DC 20460.

No

understood to be terms of limitation. Any records identified with respect to a particular person also includes any records for that person by any other name, pseudonym, codeword, symbol, number, cryptonym or alias.