

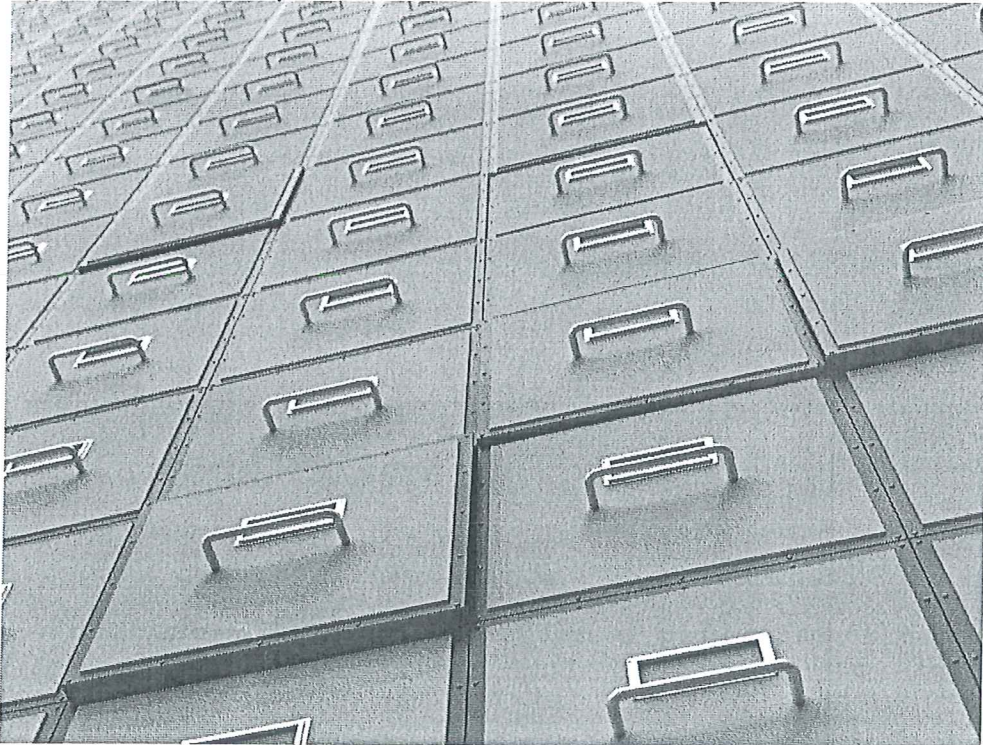
*File
Joannides sent
by J. Morley*

COMMENTARY

Obama's Openness v. CIA Secrecy

JFK Files Show Hurdles to Obama's Transparency Goals

By Jefferson Morley 2/5/09 5:42 PM



iStockphoto

As the Senate Intelligence Committee grills prospective CIA director Leon Panetta, President Obama's commitment to open government finds itself facing a culture of secrecy that has grown broader and deeper since September 11.

Obama's executive order strengthening the Freedom of Information Act, issued on his second day in office, signaled his intent to open up the federal government to greater public accountability. The harder part will

come in delivering results, especially at the CIA.

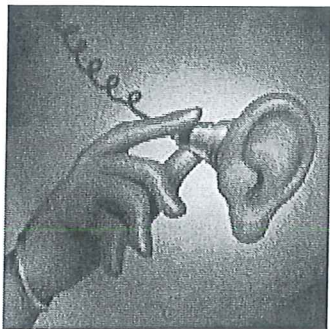


Illustration by: Matt Mahurin

Obama's appointment of Panetta, the tactful former White House chief of staff known for his diplomatic and managerial skills, signalled a clear desire to go outside the ranks of the agency to establish new management. Like the FOIA order, Panetta's nomination arises from Obama's conviction that democratic self-government requires accountability for government officials engaged in legitimate, secret government activities.

The last two incoming Democratic presidents also had the same impulse—and both were thwarted. In 1977 Jimmy Carter wanted Ted Sorensen, former speechwriter for President John F. Kennedy, to head the agency. A vocal rebellion in the ranks of the clandestine service killed the idea. In 1993, Bill Clinton wanted to put dovish career national security bureaucrat Anthony Lake in charge in Langley. Same rebellion. Same result.

The sheer fact that Panetta's nomination has gotten further than either Sorenson or Lake is testament to changing times and Obama's political skill. As Spencer Ackerman of The Washington Independent has reported, the clandestine service has been placated by the retention of career officer Mickey Kappes. As the son of a career CIA officer, Kappes was literally born and bred in the Agency. If Panetta has paid his taxes, Obama may get the independent leadership he seeks.

But history shows that Obama's commitment to open government, while rhetorically appealing and politically popular, also carries a real political price and nowhere more so than Langley, where secrets are the coin of the realm and not willingly surrendered.

As Ackerman has noted, one of the toughest issues facing Panetta is the question of releasing the tightly held CIA inspector general reports on torture and rendition. Disclosure of the reports would likely heat up the already simmering debate about whether Bush administration officials should be investigated for their role in the implementing the torture regime.

Rush Limbaugh has said he worries that Obama's FOIA order might make it easier to investigate Bush and his colleagues, a prospect he called "un-American." The under-informed talk show host was mistaken about the potency of FOIA. The law exempts the operational files of intelligence agencies from disclosure under most circumstances. Investigators of the Bush era will have to use other tools to get the full story. But Limbaugh was right to recognize Obama's open government instincts as a threat to those government officials who use secrecy to hide illegality.

Slate's Fred Kaplan hailed Obama's FOIA order saying, "his campaign talk about 'a new era of open government wasn't just rhetoric; it's for real.'" Obama's order countervailed a much more restrictive order, issued by John Ashcroft in October 2001. FOIA, Obama said "should be administered with a clear presumption: In the face of doubt, openness prevails."

But the reality remains that secretive government agencies retain the upper hand over the public and the Congress, even when it comes to records that more than 30 years old.

Case in point: CIA lawyers are actively seeking to block FOIA appeals for disclosure of antique records related to the assassination of President John F. Kennedy, even as the agency's own statements raised new questions about the its actions in the tragedy's aftermath. Full disclosure. I am the plaintiff in the lawsuit which seeks records of a deceased CIA officer named George Joannides.

The new questions arise from a sworn declaration, filed in November, by Delores Nelson, chief of CIA information programs, in which she acknowledged that the agency, unbeknownst to Congress, had assigned an undercover officer to work with investigators looking into the Kennedy's murder. Joannides had worked on two "covert projects" in his 28-year CIA career, Nelson stated. One was running covert operations in Miami in 1963. The other was serving as the agency's liaison to the House Select Committee on Assassinations in 1978.

"Joannides served undercover in both of these assignments," Nelson asserted.

The CIA did not respond to questions about Joannides' undercover mission with the HSCA for this piece. The nature and purpose of that mission, if there was one, remain unknown.

The Agency did not inform Congress of Joannides' undercover status, said G. Robert Blakey, a Notre Dame law professor and former federal prosecutor who ran the HSCA investigation. In an email, Blakey said CIA officials only told him that Joannides would "help facilitate the committee's work."

"I was not told that he had an undercover role with the committee,"

Blakey wrote. "I would not have dealt with him in any capacity that was not fully open."

In 1963, Joannides served in Miami as the chief of the agency's psychological warfare operations against Fidel Castro's communist government in Cuba. Declassified CIA records show that Joannides secretly funded an anti-Castro student front group that generated propaganda about Lee Harvey Oswald's pro-Castro activities both before and after JFK was killed, allegedly by Oswald.

Blakey says the CIA did not tell him about Joannides' psychological warfare assignment in Miami in 1963 either.

"Had I know that he would not have been a facilitator," Blakey wrote, "he would have been under oath as a material witness."

The CIA's determination to keep the whole matter buried is clear. Nelson's declaration revealed for the first time that the CIA retains 295 documents concerning Joannides' secret operational activities in 1963 and 1978 that it will not release *in any form*. Their release would threaten the national security and foreign policy interests of the U.S. government, Nelson asserted.

In the case of the Joannides files, the legal requirement for disclosure is clear. Quite apart from FOIA, the JFK Records Act of 1992 mandates that all assassination-related records be reviewed and released "immediately." The intent of Congress and the White House is not in dispute. The JFK Act was approved unanimously by Congress, signed into law by President George H.W. Bush and implemented by President Clinton.

John Tunheim, the federal judge who chaired an independent panel created by the act which declassified 5 million pages of JFK records in the 1990s, says the Joannides files qualify as JFK records and should be reviewed and released.

"If we had known who Joannides was we would have released all of those records," Tunheim said in an interview.

"I don't understand why they are fighting so hard on this," Tunheim went on. "The only thing I can think of is they don't want to create a bad precedent on FOIA. They're trying to preserve the right to do whatever the hell they please under FOIA."

Anna Nelson, professor and resident historian at American University who served with Tunheim on the Assassination Records Review Board from 1994 to 1998, said the CIA "is being foolishly recalcitrant. How long do we wait for the CIA around to tell us who was involved?"

Yet the Joannides files remain secret and impervious to outside review.

The staff of the National Archives asked to review the disputed records and was rebuffed. The agency said it wouldn't share the documents as long as my lawsuit was pending.

Joannides died in 1990. He was never interviewed by any JFK investigators.

If stonewalling is the agency's posture over documents that are 30- to 45-year-old documents for which there is a long-standing legal and political mandate for release, what are the prospects that a rookie president's wishes are going to have a substantive effect on far less moldy documents that involve current and former government officials and fierce political dispute?

Minimal says, Mark Zaid, a Washington attorney with a national security practice who often litigates FOIA issues.

"I don't think I will see anything different in litigation than I have in the past at least not soon," Zaid said. "In these types of cases, the government and the agencies have so little to lose that they drag it out as long as they want."

"Nice words from Obama and [Attorney General Eric] Holder is one thing," Zaid added. "But the GS-12 [meaning a mid-level federal civil servant] who is doing the declassification has to feel the GS-15 who is their boss will support them when they try to open records."

"It will take years, not months," for the impact of Obama's order to be felt, Zaid said.

Obama's executive order should be applied to pending FOIA cases, said Meredith Fuchs, general counsel for the nonprofit National Security Archives which houses collections of U.S. government documents and frequently litigates for the release of secret records.

"It is incumbent on the Justice Department and the CIA to employ the presumption in favor of disclosure in the Joannides case and other pending litigation," Meredith Fuchs, general counsel for the nonprofit National Security Archives said in an email. "Where cases have been fully briefed and/or argued, it may take some work for that new policy to have an impact, however."

That's an understatement. My attorney, Jim Lesar, filed the lawsuit seeking Joannides records in December 2003. Five years later, the case is still pending before Judge Richard Leon in Washington federal court.