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February 20, 1986

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FEB 20 1986

POLICE COMMISSION

HAND DELIVERED

Robert M. Talcott, President
Los Angeles Police Department
Board of Police Commissioners
150 North Los Angeles Street
Los Angeles, California 90012

Re: Senator Robert Kennedy Investigative
Summary Report (Kennedy Report)

Dear Commissioner Talcott:

This office in conjunction with staff of the Department has completed our review of the above-noted Kennedy Report in order to determine what parts of the Kennedy Report should be disclosed pursuant to the requirements of the California Public Records Act (Act), California Government Code section 6250, et seq. This letter is to provide you and other members of the Commission, as well as those persons who receive the Kennedy Report, with a review of the law concerning the Act, and in particular, the basis for any redactions made in the report.

The philosophy of the Act is set forth in Government Code section 6250 which states in relevant part:

"[T]he Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state."

Commissioner Talcott
February 20, 1986
Page 2

The Act sets forth specific exemptions that allow a public record, or a part thereof, to be withheld from public disclosure. However, where "non-exempt materials are not inextricably intertwined with exempt materials and are otherwise reasonably segregable therefrom, segregation is required to serve the object of the [Act] to make public records available for public inspection and copying unless a particular statute makes them exempt." Northern Cal. Police Practices Project v. Craig (1979) 90 Cal.App.3d 116, 124, 153 Cal.Rptr. 173. Therefore, where possible, as little of the Kennedy Report was redacted so as to provide facts and information to the public, while at the same time, protecting the interest involved in the exemption claimed.

There were two (2) exemptions claimed in the Kennedy Report. One exemption involves the right to privacy and the other concerns governmental privilege. Most of the redactions in the Kennedy report were based on the right to privacy. If a redaction in the report has a number one (1) next to the redaction or there is no number next to the redaction, the basis for the redaction was the right to privacy. All redactions based on the assertion of a governmental privilege will have a number two (2) next to the redaction.

I RIGHT TO PRIVACY

Government Code section 6254, subdivision (k) exempts from disclosure "[r]ecords the disclosure of which is exempted or prohibited pursuant to provisions of federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." Government Code section 6254, subdivision (k) is not therefore an independent exemption but rather one that incorporates by reference other legal exemptions and prohibitions. See San Gabriel Tribune v. Superior Court (1983) 143 Cal.App.3d 762, 776, 192 Cal.Rptr. 415. The right to privacy in California is one of constitutional dimension (Cal.Const., art. 1, §1) and a governmental agency has a duty to assert and protect the rights of others to prevent unauthorized disclosure. Craig v. Municipal Court (1979) 100 Cal.App.3d 69, 76, 161 Cal.Rptr. 19. The constitutional right to privacy, however, is not an absolute right. "[T]he constitutional right to privacy must be balanced against the public's interest in its business in much the same way that the courts have sought accommodation of the reputational interests of the individual

Commissioner Talcott
February 20, 1986
Page 3

and the United States Constitution's First Amendment's protection of press freedoms. (Citation.)" Braun v. City of Taft (1984) 154 Cal.App.3d 332, 347, 201 Cal.Rptr. 654.

In determining whether a part of the Kennedy Report should be redacted in order to protect the right to privacy, the below noted factors were considered. These factors are not necessarily relevant to each redaction made in the Kennedy Report, nor should they be viewed as the limit of the factors considered. They are the ones that were most often considered by us in evaluating the right to privacy.

Importance of the Event. An overriding factor involved in our analysis of the Kennedy Report was that this report concerned a very important event of historical importance. There were many close calls on whether a part of the Kennedy Report should be redacted. If this was an ordinary report about an ordinary event, we might have balanced, in many instances, in favor of privacy, and therefore redacted. Because of the importance of the event, we more often, in close call situations, decided to disclose rather than redact.

Relevancy of the Information to the Assassination of Robert Kennedy. A great deal of the information in the report was directly related to the killing of Senator Kennedy. For example, precautions taken by the Kennedy staff, witnesses to the shooting, transportation to the hospital, medical treatment, and background information of the assassin. Because of the public interest and right to know this information, little of that information was redacted. Other information in the Kennedy Report had no direct relevancy to the event but was tangential in nature.

Public Figure v. Non-Public Figure. Very little information concerning public figures was redacted from the Kennedy Report. Exceptions were made for such matters as home addresses and telephone numbers.

Public Released Information. On a few occasions, the Kennedy Report would indicate that the information included in the report had been obtained from an existing document which had been already publically released. If this was the case, the information would not be redacted, unless it was defamatory on its face. It should be stressed that we did not look beyond the four corners of the Kennedy Report to determine if a fact

included in the report had already been publically released. To do so would involve a tremendous burden because a great deal has been written about Senator Kennedy's assassination. We do not believe that the Act requires the City to assume such a burden. See Government Code section 6255.

Impair a Person's Reputation. A great deal of the information in the Kennedy Report would not state anything that could be considered to be disparaging to one's reputation. On the other hand, statements about a person's criminal history or drinking problems would either be redacted, or the person's name associated with this type of conduct would be redacted. However, nothing about the assassin was redacted from the report.

Deceased Individuals. We did not check to see if persons included within the Kennedy Report were presently alive. In a few instances, the fact that a person was deceased was indicated in the Kennedy Report or was known to us. The right to privacy generally does not continue after a person's death.

Facts Relevant to How Government Works. Unless information of this type would be protected by the governmental privileges noted below, we would disclose this type of information. Very little of the Kennedy Report was of this nature.

Passage of Time. In many instances the passage of time plus the right to be left alone was considered by us. This was particularly the case in the sections of the Kennedy Report that included summaries of the numerous interviews. Many of these summaries recounted information relevant to alleged conspiracies which turned out to be without any basis in fact. However, while a person's name would be redacted, information and facts relevant to the person would be left in the report.

II. GOVERNMENTAL PRIVILEGES

As noted above, Government Code section 6254, subdivision(k) exempts records from disclosure pursuant to federal or state law. The governmental privilege as found in Evidence Code section 1040 is therefore a basis for non-disclosure. See San Gabriel Tribune v. Superior Court, supra, at p. 775. Section 1040 allows a privilege of

Commissioner Talcott
February 20, 1986
Page 5

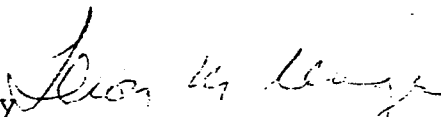
non-disclosure for "official information. . . acquired in confidence by a public employee in the course of his duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made." Subdivision(b)(2) of section 1040 allows a governmental entity to withhold information "that is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice. . . ." Government Code section 6255 also allows a record, or a part thereof, to be withheld if "on the facts of the particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record." Information that is obtained with the understanding that it would be kept confidential is subject to non-disclosure under the Act. See Johnson v. Winter (1982) 127 Cal.App.3d 435, 439, 179 Cal.Rptr. 585.

The parts of the Kennedy Report that would provide information as to how the Department handles emergency operations were redacted if the disclosure of that information could thwart the effectiveness of future police operations. Information from confidential informants or from other agencies where a promise of confidentiality was made, was also redacted, depending on the specific facts. Department staff advised this office that it is the policy of the Federal Bureau of Investigation, the United State Secret Service, and other similiar governmental agencies to not disclose the names of their employees. Therefore, these names were redacted from the Kennedy Report. The information relevant to these governmental employees was not redacted.

We hope the above information has explained the process considered by us. We can assure you that this review and redaction of the Kennedy Report was done in order to provide the public with as much relevant information as possible while at the same time protecting the rights of individuals to privacy and legitimate governmental interests.

Very truly yours,

JAMES K. HAHN, City Attorney

BY 

LEWIS N. UNGER
Assistant City Attorney

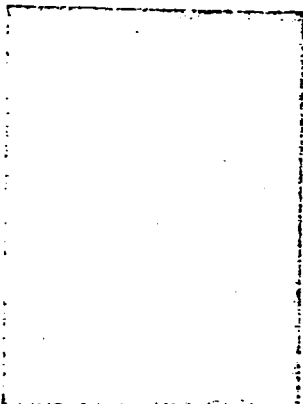
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An INVESTIGATION SUMMARY
of the
SENATOR ROBERT F. KENNEDY
ASSASSINATION

June 5, 1968

VOLUME I Pages 1-118
DETECTIVE BUREAU - LOS ANGELES POLICE DEPARTMENT



April 4, 1969

TO: Thomas Reddin
Chief of Police

FROM: Deputy Chief Robert A. Houghton
Commander, Detective Bureau

SUBJECT: REPORT OF THE INVESTIGATION OF THE KENNEDY
ASSASSINATION

This is the report of the investigation into the assassination of Senator Robert F. Kennedy. The investigation was accomplished by an investigative task force created within the Detective Bureau, and designated Special Unit Senator. This report was prepared by the special unit.

This report is considered to be confidential. The report distribution is: One to your office; one in my office and one to remain with the master files to serve as a file summary and an access reference.

At the time of this report the trial of the accused, Sirhan B. Sirhan, is still in progress. A supplemental report will be compiled at the conclusion of trial and will additionally cover miscellaneous investigations completed too late for inclusion in this report.

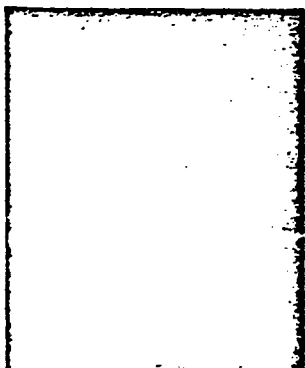
ROBERT A. HOUGHTON, Deputy Chief
Commander, Detective Bureau



An INVESTIGATION SUMMARY
of the
SENATOR ROBERT F. KENNEDY
ASSASSINATION

The FINAL REPORT
February 1969

SPECIAL UNIT SENATOR
DETECTIVE BUREAU — LOS ANGELES POLICE DEPARTMENT



CONTENTS

VOLUME I

	Page
Chapter I. INTRODUCTION	
Chapter II. SUMMARY OF THE INVESTIGATION	
The Assassination	1
The Assassin	37
Investigations of Possible Conspiracies	61
Case Preparation for Trial	96
Legal Processes	106
Related Events Occurring Since the Assassination	109
Conclusions	117

VOLUME II

Chapter III. THE ASSASSINATION	
Kennedy's Plans and Activities	
Kennedy's Activities of June 2-4	119
The Ambassador Hotel	122
Security	
Security Provided by Los Angeles Police Department	124
Example of Kennedy Party Attitude Toward the Police Department	127
Personal Security	131
Security Provided by the Ambassador Hotel	133
Election Night at the Hotel	136
Press Coverage at the Ambassador	140
Victory Speech	143
From the Stage to the Kitchen	146
The Shooting	149
Sirhan's Capture	155
Medical Treatment and Autopsy (Senator Kennedy)	163
Other Victims of the Shooting	177
Police Participation	
Ambassador Hotel	186
Central Receiving Hospital	227
Good Samaritan Hospital	238
Functions of Rampart Patrol and Detectives	264
Emergency Control Center and Security at Parker Center	280
Transfer of Senator Kennedy's Body from Good Samaritan Hospital to the Los Angeles International Airport	296

VOLUME III

	Page
Chapter IV. THE ASSASSIN	
Sirhan's Activities the Night of June 4, 1968	299
Sirhan's Arrest and Arraignment	305
Identification of Sirhan	
Gun Provided Link to Sirhan	315
Adel Sirhan at the Pasadena Police Department	317
Follow-up at Pasadena (Search of Sirhan's House)	318
Sirhan's Vehicle (Location and Search)	329
Survey of Area in an Attempt to Locate Witnesses to Parking of Vehicle	336
Sirhan's Background (Profile Analysis)	
Early Years in Jerusalem	338
Chronicle of Sirhan's Family in the United States	344
School History in the United States	353
Employment History	361
Financial Status	370
Medical History	374
Criminal History	379
Social Activities	381
Religious Background	389
The Rosicrucian Order (Involvement in Mysticism)	393
Political Background	400

VOLUME IV

Chapter V. INVESTIGATION OF POSSIBLE CONSPIRACY

Events at the Ambassador and Campaign Headquarters	
Embassy Room Exits	405
Polka Dot Dress Investigation	408
[REDACTED]	425
[REDACTED]	435
[REDACTED]	440
Possible Involvement with Extremist Groups	
[REDACTED] -- Cuban Group	445
[REDACTED]	455
Possible Association with Communists	460
Possible Involvement with Arabic Groups	
Investigation Involving The Fez Restaurant	475
Arab Student Groups	487
Arab [REDACTED]	491
Conspiracies Inferred from Sirhan's Activities	
Purchase of the Murder Weapon by Sirhan	493
Companion at Gun Shop	497
San Gabriel Valley Gun Club Investigation	502

Chapter V. INVESTIGATION OF POSSIBLE CONSPIRACY - Continued

	Page
Voluntary Witnesses	
[REDACTED] Investigation	515
[REDACTED] Investigation	536
The [REDACTED] Investigation	544
[REDACTED]	551
The Baltimore Hotel Investigation	555
[REDACTED]	559
[REDACTED]	568
Miscellaneous Incidents	
[REDACTED]	573
Incident at San Fernando Valley College	577
Middle East News Release	579
[REDACTED]	582
Corona Check Investigation	585

VOLUME V

Chapter VI. CASE PREPARATION FOR TRIAL

Case Preparation for Trial	588
Investigation of Premeditation	
Investigation of the Assassination Weapon	598
Purchase of Ammunition	601
Sirhan's Practice at the Range	602
Corona Range Investigation	605
Results of Handwriting Analysis	608
Witness to Sirhan's Intention to Kill Kennedy	611
Evidence of Prior Contacts with Kennedy	614
Activities 72 Hours Prior to Assassination	616
State of Mind - Interviews with Police After Arrest	623
Physical Evidence	
Evidence Booked During the Investigation	627
Analysis of the Murder Weapon and Bullets	649
Other Investigations and Investigative Techniques	
Photographs	653
Record and Background Investigation	657
Unruh Letter	659
Gun Range Checks	663
Field Interrogation Cards	668
Telephone Calls from the Sirhan Home	669
Gun Shop Investigation	670

Chapter VII. LEGAL PROCESSES (FROM ARRAIGNMENT TO TRIAL).

Legal Processes	672
Request to Parsons for Interview of Sirhan	682

Chapter VIII. RELATED EVENTS OCCURRING SINCE THE ASSASSINATION

Events Involving Sirhan's Family Since the Shooting .	683
Involvement of Independent Writers	
Rex Westerfield	702
Theodore R. Charach	706
[REDACTED]	712
[REDACTED]	713
[REDACTED]	719
Summary of Letters Received by S.U.S.	721