

UNITED STATES GOVERNMENT

memorandum

DATE: October 5, 1977

REPLY TO
ATTN OF:

SUBJECT: Memorandum of Understanding -
House Select Committee on Assassinations

TO: The Attorney General

From: *R. Keuch*
Robert L. Keuch
Special Counsel to the Attorney General

RECEIVED
OFFICE OF THE
ATTORNEY GENERAL
OCT 5 1977

By memorandum dated September 28, 1977, a copy of which is attached for your information, I advised you that an open matter with the House Select Committee was the proper interpretation of one charge of the proposed "Memorandum of Understanding."

As noted in my previous memorandum, the area of dispute was the proper interpretation of the phrase "discuss" in conferences between myself and the Committee's Chief Counsel concerning the excisions made in the materials produced for the Committee. We have now agreed that this phrase is to mean that we will make available for review by Committee Counsel a random selection of unexcised documents, except for those documents that will disclose the identity of informants. I will make available for review unexcised documents which involve technical surveillances, surreptitious entries, mail covers and the like. Moreover, in those areas involving informants, we will provide as much information as possible to satisfy the Committee Counsel that the excisions are being done in a proper manner. In addition, where possible, we will consult with informants to see if they would agree to such limited dissemination.

It is anticipated that those documents which we will not produce as part of this procedure and as to which we cannot otherwise satisfy the Committee's Chief Counsel, a class of documents which should be very small, will be put aside for further consideration when the Committee's investigation has reached its first stage so that we can make a further decision as to whether access might be granted and the Committee can decide whether to accept our denials or to pursue the matter by subpoena and litigation.

With this legislative history, this Memorandum of Understanding is fully acceptable to the FBI and, in my judgment, serves the Department's interests very well. I recommend that you sign the attached memorandum.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE ATTORNEY GENERAL AND
THE SELECT COMMITTEE ON ASSASSINATIONS

I. Preparation of Materials

A. General Rules:

(1) The Department of Justice (DOJ) and all divisions thereof, including the Federal Bureau of Investigation (FBI), will cooperate fully in the investigations conducted by the Select Committee on Assassinations (Committee) by authorizing and providing access, either by providing copies of materials when appropriate, or making information available for review, as requested, to information within the releasing authority of the DOJ that bears upon the study and investigations authorized by H. Res. 222. The terms of this Memorandum shall govern access to all information within the releasing authority of the DOJ held by any federal agency or department. The DOJ will inform the Committee of any requested information held by the DOJ not within the releasing authority of the DOJ, and of the proper authority to contact to obtain access to the information. Requested material will be made available by the DOJ as expeditiously and completely as feasible, and partial access shall be provided while the balance of such materials are being prepared.

(2) No document or portion of a document in the possession of the DOJ (or any of its divisions) shall be withheld without appropriate notice to the Committee of the action and whenever possible the reason for it.

B. Specific Rules:

(1) The Committee and the DOJ will periodically agree upon a list of identities that will not be excised from materials turned over to the Committee.

(2) Foreign Intelligence Operations and Sources and Other Sources of Comparable Sensitivity; Informants: Subject to the list of identities that will not be deleted, where (1) requested classified materials identify peculiarly sensitive on-going foreign intelligence operations or peculiarly sensitive foreign intelligence sources or other sources of comparable sensitivity, or (2) requested materials reveal the identity of FBI sources who are or were informants or potential informants as defined in the FBI Manual of Instructions, the DOJ will appropriately sanitize, including excising, if necessary, information identifying such operations, sources or informants.

When an excision is made, the DOJ will substitute a description of the nature of the intelligence operation, method (including the functional intelligence discipline that was the source of the intelligence), source or informant excised wherever possible without compromising sources or methods. The Chief Counsel of the Committee and the designated representative of the Attorney General shall meet monthly to discuss a random sample of the materials selected by the Chief Counsel for the purpose of verifying the appropriateness of the sanitizing done by the DOJ, and any materials on which they disagree shall be referred to the Committee Chairman, Ranking Minority Member and if necessary the Attorney General for resolution.

(3) Matters in Litigation and Pending Prosecution; Sources: Subject to the list of identities that will not be deleted, where requested materials would (1) reveal matters in current litigation, or in which criminal prosecution is pending, or (2) identify as FBI "sources" persons who have provided or continue to provide information to the FBI and as to whose identity the FBI has undertaken an obligation of confidentiality, the DOJ will appropriately sanitize, including excising, if necessary, such information. Upon written request by the Chairman of the Committee to the Attorney General's designee, the complete and unsanitized materials shall be made available at suitable offices in the Hoover Building to the Chairman, Ranking Minority Member and Chief Counsel and, when agreed to by the Attorney General or his designee, staff members designated in writing by the Committee Chairman to receive such access.

II. Request Procedure

A. The Attorney General shall designate a Special Counsel to be responsible for dealing with the Committee. Committee requests for information shall only be conveyed to the DOJ through the Special Counsel. Absent extraordinary circumstances, appointments with DOJ employees and former employees will be arranged through the Special Counsel.

B. All Committee requests for information shall be in writing. In the interest of timely response, the Special Counsel will accept preliminary telephone or other oral requests from specific and agreed upon staff members, but no information will be made available until a request is received in writing from the Committee Chairman.

III. Staff Clearance

Prior to access by Committee personnel to any material covered by the terms of this agreement, such Committee personnel will be granted security clearance after consultation with the CIA. Committee personnel requiring access to such material will be required to execute, in advance, the attached Select Committee on Assassinations Nondisclosure Agreement.

IV. Examination of Material

Materials to which access has been granted by the DOJ will be reviewed in suitable private offices in the Hoover Building set aside for this purpose, or upon agreement in a designated area within the Committee's offices.

V. Transcripts of Statements Under Oath

A steno-typist from either the Committee or the DOJ will make a verbatim record of all statements of current DOJ personnel taken under oath. One copy of the record will be made available to the Committee and the other to the DOJ in accordance with the Rules of the Committee and pursuant to this Memorandum.

VI. Storage of Materials

Committee procedures for control and storage of any documents or materials provided by the DOJ which require protection will follow security standards and procedures established in consultation with, and approved by, the DOJ and the CIA.

VII. Disclosure of Information

A. With respect to information supplied by the DOJ which (1) identifies informants or potential informants (as referred to in Paragraph 1.B.(2) of this Memorandum), or confidential FBI sources as "sources" (as referred to in Paragraph 1.B.(3) of this Memorandum), or (2) reveals matters in current litigation or in which criminal prosecution is pending, or (3) is classified information designated for protection from unauthorized disclosure by the Attorney General or an other properly designated official that identifies peculiarly sensitive ongoing foreign intelligence operations or peculiarly sensitive foreign intelligence sources, the Committee Chairman shall notify the Attorney General or his designee in writing of the Committee's desire to disclose such information in any manner, including under the Select Committee on Assassinations' Nondisclosure Agreement. If within five days

from receipt of such notice the Chairman does not receive written notice from the Attorney General or his designee objecting to the proposed disclosure and stating the reasons for it, the Committee may disclose the information.

B. If the Attorney General or his designee notifies the Committee within five days that he objects to the proposed disclosure of such information, and states the reasons for the objection, the Chairman of the Committee and the Attorney General, or their designated representatives, shall meet to attempt to resolve any differences over the information to be disclosed. If the Chairman of the Committee considers that the negotiations have reached an impasse, he will give the Attorney General written notice to that effect, and the Committee will take no steps until at least 14 days thereafter to disclose the information in dispute.

C. Any differences left unresolved by negotiation may become the subject of litigation. In any such action, each party will be free to assert all its constitutional, statutory, or other legal rights, and the parties hereby agree to be bound by the final outcome of any such action. If such an action is commenced by the Executive Branch but is disposed of without a judicial decision on the merits of the disclosure issue, the Committee agrees that it will not on that basis, or on the basis of its 14-day notice letter, disclose the information in dispute. This Memorandum, however, is without prejudice to any of the Committee's other rights, privileges and responsibilities concerning the production by legal compulsion and disclosure of information, and the Attorney General's rights, privileges and responsibilities concerning the protection from disclosure of the information.

W. J. Brennan

Attorney General
of the United States

Chairman
Select Committee on Assassinations

Oct. 5, 1977

Date

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