

APR 13 1965

**MEMORANDUM FOR: Honorable McGeorge Bundy
Special Assistant to the President**

**RE: Public Availability of Materials Delivered to the
National Archives by the President's Commission
on the Assassination of President Kennedy.**

The Department of Justice has completed the study, requested by you in your memorandum of January 15, 1965, concerning the advisability of modifying the usual restrictions which would govern the availability to the public of materials delivered to the National Archives by the President's Commission on the Assassination of President Kennedy. In the course of this study, the Department of Justice has obtained the views of the President's Commission, the Archivist of the United States, the interested Federal agencies and the Dallas Police Department.

Under normal regulations governing access to materials deposited in the National Archives, materials are made available to any competent adult with a definite, serious reason for requesting access, unless there is in effect an overriding restriction on disclosure or disclosure would violate obvious requirements of public policy or propriety. With respect to investigative reports furnished to the President's Commission by Federal agencies, the relevant restriction is a rule of nondisclosure for a period of 75 years unless the agency in which the report originated authorizes disclosure.

The Chief Justice has informed me in a letter dated April 5, 1965, that the President's Commission concluded, after full consideration, that the public availability of the Commission's records was a matter to be resolved by the Attorney General and the originating agencies in accordance with established law and policies

of the Government. According to the Chief Justice, the Commission assumed that these determinations would be made in light of "the overriding consideration of the fullest possible disclosure." Moreover, the Commission did not desire to restrict access to any of its working papers except those classified by other agencies.

Eased on the views of the Commission and the recommendations of the Federal agencies involved (summarized in the Attachment to this letter), the Department of Justice believes that there should be some modification of the normal procedures of the National Archives. The Department recommends that the following procedures be adopted in order to accomplish the most complete disclosure consistent with other legitimate interests:

1. All material furnished to the President's Commission by the Dallas Police Department and the Immigration and Naturalization Service should be made available to the public on a regular basis, since both agencies have authorized full disclosure.

2. Investigative reports and related materials furnished to the President's Commission by other Federal agencies should be administered in accordance with the existing regulations of the National Archives. These agencies should be requested to examine the materials furnished by them with a view to authorizing the immediate disclosure on a regular basis of as much of the materials as possible. (Where materials originated with an agency other than the one furnishing them to the Commission, the decision regarding disclosure should be made by the originating agency.) The following guidelines should be applied:

- a. Statutory requirements of nondisclosure should be observed;
- b. Security classifications should be respected, but the agency responsible for the classification should consider whether the classification can be eliminated or graded down consistently with the national security;

- c.** All unclassified material which has been disclosed verbatim or in substance in the Report of the President's Commission or accompanying published documents should be made available to the public on a regular basis. (In this connection, it should be noted that the Archivist has advised that a final determination of which reports have been published in whole or in part, verbatim or in substance, will not be available before 1966.)
- d.** Unclassified material which has not already been disclosed in another form should be made available to the public on a regular basis unless disclosure
- 1) will be detrimental to the administration and enforcement of the laws and regulations of the United States and its agencies;
 - 2) may reveal the identity of confidential sources of information or the nature of confidential methods of acquiring information, and thereby prevent or limit the use of the same or similar sources and methods in the future;
 - 3) may lead to the incorrect identification of sources of information and thereby embarrass individuals or the agency involved;
 - 4) would be a source of embarrassment to innocent persons, who are the subject or source of the material in question, because of the dissemination of gossip and rumor or details of a personal nature having no significant connection with the assassination of the President;

- 5) will reveal material pertinent to the criminal prosecution of Jack Ruby for the murder of Lee Harvey Oswald, prior to the final judicial determination of that case.

Where one of the above reasons for nondisclosure may apply, the agency involved should weigh such reason against the "overriding consideration of the fullest possible disclosure" in determining whether or not to authorize disclosure.

- e. Except in special cases, documents should be withheld or disclosed in their entirety.

3. Classified and unclassified material which is not made available to the public should be reviewed by the agency concerned five years and ten years after the initial examination has been completed. The criteria applied in the initial examination, outlined above, should be applied to determine whether changed circumstances will permit further disclosure. Similar reviews should be undertaken at ten-year intervals during the remainder of the 75-year period of nondisclosure. The Archivist should undertake to arrange for such review at the appropriate times.

4. When a request for limited disclosure of particular unclassified documents or groups of documents is received by the Archivist, he should communicate such request to the agency concerned, which should consider the request in the light of the criteria outlined above and, wherever consistent with those criteria, authorize the limited disclosure requested. In the application of the criteria, consideration should be given to the qualifications of the person requesting disclosure and the purpose for which the request is made.

It should be noted that the Archivist has indicated that the arrangement and preparation of an inventory of the material turned over to the National Archives by the President's Commission will not be completed until June 1, 1965. Accordingly, it is unlikely that a review of the material turned over to the Commission by the various agencies can be undertaken before that date. It is suggested that the Archivist be

asked to make arrangements with the various agencies for such review to be undertaken at the earliest possible date, to be carried out on an expedited basis.

The Archivist has advised that the disposition of materials originating with the President's Commission itself has been discussed with Mr. Rankin and that a final decision has been deferred until after June 1. He has advised also that pending a determination of the ownership of physical exhibits, requests for access to them will be referred to the Department of Justice. While it is anticipated that the fullest possible disclosure of these portions of the record will be authorized, in accordance with the desires of the President's Commission, the Department believes that particular decisions as to them should not be made until information regarding them is complete.

If these procedures meet with your approval, this Department will prepare the necessary instructions.

Attorney General

Attachment

Summary of Views of Interested Federal Agencies
Concerning the Disclosure to the Public of Materials
Delivered to the National Archives by the President's
Commission on the Assassination of President Kennedy.

In response to inquiry by the Department of Justice, the federal agencies which submitted reports or other materials to the President's Commission expressed the following views regarding the disclosure of these materials to the public.

1. Federal Bureau of Investigation. The Federal Bureau of Investigation recognizes that materials furnished by it for use by the President's Commission, except those which were classified for reasons of national security, are in the public domain. Most of the material furnished by the Bureau was unclassified. Security classification was necessary in some instances to prevent the identification of confidential informants, to protect the secrecy of confidential investigative techniques, to avoid disclosure of information showing the Bureau's coverage of the Soviet Embassy in Washington, D. C., and to maintain the classification imposed by other agencies on information furnished by them to the Bureau. The Bureau believes that classified material should be disclosed only to persons having the necessary security clearance.

The Bureau believes that another problem is presented by unclassified material, some of which contains reports of rumor, gossip, and similar data involving innocent people. Some of this unclassified material contains the results of extensive investigations of Mrs. Marina Oswald and various associates of the Oswalds. Disclosure of such material, the Bureau believes, would be a source of unwarranted embarrassment to the people concerned. Some material contained in unclassified documents was furnished to the Bureau in confidence by sources such as banks and hotels. The records of these sources cannot be produced except pursuant to a court order. Public disclosure of this information might cause the Bureau to lose the cooperation of such sources in the future and might subject the sources to civil suit.

A separate problem is presented by records of the Bureau's investigation of Mr. Jack Ruby, whose conviction for the murder of Oswald is still under review in the Texas courts.

The Bureau, which has retained records of all material furnished to the President's Commission, is prepared to examine all classified documents in order to extract the classified information and make the remainder available to the public. In addition, the Bureau is prepared to review the classification of all classified documents at least once a year and at any time in response to a specific inquiry concerning the classification of a particular document.

While pointing out the problems noted above concerning undisclosed material, the Bureau makes no specific recommendation concerning such items.

2. Secret Service. The Secret Service recommends that access to its investigative reports furnished to the President's Commission remain restricted for all reports in the following categories:

- "(1) Reports affecting national security.
- "(2) Reports which reveal the extent of Presidential protection or protective techniques.
- "(3) Reports mentioning innocent persons having no connection with the subject of the investigation that would needlessly embarrass or damage the innocent parties.
- "(4) Reports containing information given to us in confidence which, when investigated, was found to:
 - (a) have no connection with the assassination;
 - (b) be untrue, yet the reports would be embarrassing, both to the supplier of the information who may have acted in good faith in view of the importance of the subject matter of the investigation, or to the person concerning whom the information was furnished; e. g., derogatory remarks about President Kennedy attributed to persons before and after the assassination.

"(5) Reports containing information from confidential informants from which readers might draw an inference, erroneously or correctly, as to the identity of the confidential informant."

The Secret Service has indicated its willingness to examine the reports furnished by it to the President's Commission for the purpose of determining which items may be made available to the public now (including declassification, if necessary) and which may be made available at some future time less than 75 years hence. It has also recommended an annual review of the necessity for continuing restrictions on particular items.

3. Post Office Department. The Postal Inspection Service furnished documents and information to various investigative agencies including the Federal Bureau of Investigation and the Secret Service. It believes that the receiving agencies should determine whether or not such documents and information should be disclosed.

The Inspection Service submitted directly to the President's Commission a summary of its activities, which was not a classified document. The Service has no objection to the publication of this document, but believes that the approval of the Federal Bureau of Investigation and the Secret Service should be obtained. The Inspection Service furnished to the President's Commission "copies of the front and back of POD Form 2153-X, dated September 18, 1963, covering a publication 'OGONEK' addressed to Mr. Lee H. Oswald, Box 2915, Dallas, Texas." The Service believes that these copies should not be made generally available at this time.

The Service has indicated its willingness to examine any documents furnished by it to the President's Commission for the purpose of determining whether they can be released to the public.

4. Central Intelligence Agency. The Central Intelligence Agency believes that items furnished by it to the President's Commission and withheld from the public domain under security controls should not be excepted from the normal 75-year period of nondisclosure. The Agency cooperated fully with the President's Commission and made every effort to release material furnished to the Commission for the public record.

Wherever it was possible without jeopardizing the national security or this country's posture abroad, security classifications were graded down. Because of this policy, very little of the material furnished by the Agency is now withheld from the public. The criteria which were applied in determining whether or not to release information were: (1) the evidential value of the information in question; (2) the protection of sensitive sources and methods of operation; and (3) the possibility of international ramifications in view of the fact that most of the material was acquired abroad, particularly in Mexico and the U. S. S. R. None of the withheld material has a direct bearing on the assassination of President Kennedy.

The Agency believes that the national security requires the continuance of restrictions on withheld documents and that this interest outweighs all other considerations. It recommends that at the end of the 75-year period another security appraisal be made before such documents are disclosed.

5. Department of State. The Department of State made every effort to cooperate with the President's Commission in releasing to the public all significant information concerning the assassination of the President. In a small number of cases, the publication of documents was restricted in order to protect coding systems, in the interest of national security, to avoid personal embarrassment, or because a later revision of a draft document containing the substance of the draft had been released for publication. (Where coding was involved, the full substance of the document in question was made available for publication.) A few documents were classified and have been restricted accordingly.

Some of the material which has not yet been made available could probably be released if necessary. It will probably be possible to release other material within the next ten years. In cases where a document was furnished by the Department but originated with another agency, the approval of the originating agency should be obtained. The Department is prepared to examine material furnished by it to the President's Commission now and on an annual basis hereafter to reevaluate the necessity for nondisclosure.

6. Department of Defense. The Department of Defense has examined material at the National Archives which has been identified as furnished to the President's Commission by the Department. Some of the material, consisting of investigative reports and other material relating to individuals, is of a kind normally not disclosed to the public. In view of the exceptional nature of the work of the President's Commission, however, the Department does not object to the disclosure of this material, all of which is unclassified. If further material is later identified as originating with the Department of Defense, the Department requests an opportunity to review such material before it is disclosed.

7. Internal Revenue Service. The Internal Revenue Service has no objection to unrestricted public examination of documents concerning matters included in the public record by the Report of the President's Commission.

Tax returns which have not been made a matter of public record are protected from disclosure by Sections 6103 and 7213 of the Internal Revenue Code and by 5 U. S. C. Section 22. The President has statutory authority to disclose such protected information, but the Service recommends that in accordance with the spirit of the statute, tax returns not made matters of public record not be made available for general inspection.

A determination concerning other items furnished to the President's Commission should be made on an individual basis. Many documents reflect protected tax return information. Others contain information which would indicate the identity of a confidential informant, which is scandalous and not relevant to the subject of the Commission's inquiry, which consists of unconfirmed allegations by third parties, or which discloses the Service's policies respecting collection, auditing, settling, or prosecution. The Service has traditionally maintained a policy of nondisclosure of information of this sort and believes that the public recognizes the necessity for this policy. The Service believes that disclosure of material of the kind indicated would not add significantly to the comprehensive report of the President's Commission or to public information concerning the assassination of President Kennedy. Accordingly, the Service believes that no public interest would be served by disclosure. The Service believes that except in exceptional circumstances, documents of which portions must remain undisclosed

be restricted in their entirety. If documents containing deletions are released they are likely to prompt curiosity about the deletions and may produce charges that significant information is being withheld.

As a means of assuring the public of the thoroughness of the Commission's investigation, the Service suggests that letters received by it from the President's Commission requesting documents, along with transmittal replies, be made available for inspection. Clearance to disclose such letters would have to be obtained from the President's Commission, the originating agency.

The Service has indicated its willingness to inspect material furnished by it to the President's Commission now and at periodic intervals to determine whether such material may be made available to the public. It suggests that material be withheld only if: (1) disclosure is prohibited by law or agency regulations; (2) disclosure would be detrimental to the administration of the laws administered by the agency concerned; (3) the material relates to scandalous information unrelated to the assassination; (4) the material consists of unsubstantiated information or allegations; or (5) the material could embarrass or damage innocent persons without serving the public interest in full disclosure of information pertaining to the assassination of President Kennedy.

8. Immigration and Naturalization Service. The Immigration and Naturalization Service has previously authorized the President's Commission to publish all documents furnished to it by the Service. Accordingly, the Service has no objection to the immediate disclosure of all such documents to the public.

April 19, 1965

MEMORANDUM FOR THE ATTORNEY GENERAL

**SUBJECT: Public Availability of Materials
Delivered to the National Archives
by the Warren Commission**

1. The procedures, described in your memorandum of April 13 about the above subject, have been approved.
 2. In coordination with Archives, please instruct the appropriate agencies (a) to conduct the review of documents in accordance with the guidelines set forth in your memorandum and (b) to complete this review by September 1, 1965.
- At the conclusion of this review, please inform us of the approximate percentage of the material in question which has been designated as available for public access.

McGeorge Bundy

cc: National Archives (Dr. Bahmer) ✓