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VIA Email and Overnight Delivery

February 22, 2021

Hon. Carolyn B. Maloney
Chair- House Committee on Oversight and Government Reform
2308 Rayburn House Office Building
Washington, DC 20515

Dear Congresswoman Maloney:

I am writing you as a long-term constituent and in your capacity as the chairwoman of the House of Representatives Committee on Oversight and Government Reform (“Committee”).

Pursuant to House Rule X, clauses 2, 3, and 4¹ and consistent with House. Resolution 556 which was referred to the Committee on October 4, 2017², I am requesting that the Committee conduct oversight hearings on the failure of the Executive Branch to comply with the requirements of the President John F. Kennedy Assassination Records Collection Act of 1992 (“JFK Act”).³ I ask that the Committee hold these hearings during “**Sunshine Week**”⁴ or no later than **April 26th**-- the date that the Archivist of the United States has set as the deadline for the security agencies to object to the release of the remaining JFK Records. Specifically, I ask the Committee to:

- Conduct an oversight hearing before the April 26th deadline established by the Archivist for the agencies to request further postponement;

¹ House Rule X, clause 2(b)(provides that the Committee **shall** review and study on a continuing basis... (C) any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation addressing subjects within its jurisdiction. House Rule X, clause 3(i), provides that the Committee **shall** “*review and study on a continuing basis the operation of Government activities at all levels with a view to determining their economy and efficiency.*” House Rule X, clause 4(c)(1), provides that the Committee **shall**: “(B) *evaluate the effects of laws enacted to reorganize the legislative and executive branches of the Government*”. Finally, House Rule X, clause 4(c)(2) provides that the Committee “*may at any time conduct investigations of any matter without regard to clause 1, 2, 3, or this clause [of House Rule X] conferring jurisdiction over the matter to another standing committee*”. **[emphasis added]**.

² H. Res. 556 115th Congress (2017-2018)

³ Pub. L. 102-526, 106 Stat. 3443 (1992), codified at 44 U.S.C. 2107 note, as amended by the “ President John F. Kennedy Assassination Records Collection Extension Act of 1994”, Pub. L. 103–345, § 1, 108 Stat. 3128 (Oct. 6, 1994).

⁴ Sunshine Week is an annual nationwide initiative to highlight the importance of open government and the imperative of strengthening transparency at all levels of government.. In 2021, Sunshine Week is scheduled for the week of March 14th - 20th. See <https://twitter.com/SunshineWeek>.



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- Instruct agencies that requested records to be withheld in 2017 that they are to comply with the April 26th deadline;
- Instruct any agency requesting further postponement to provide a Vaughn Index⁵ setting forth specific explanations on a document-by-document basis why the particular document needs to be withheld as required by Section 4(3)(e) of the JFK Act;
- Require all agencies to provide and publish in the Federal Register explanations for each and every postponed document (or portion of a document); and
- Investigate if certain records were properly categorized as “Not Believed Relevant” (NBR).

Attached to this letter is a memorandum supporting this request.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Larry Schnapf', is written over the typed name 'Lawrence Schnapf'. The signature is fluid and cursive, with a large loop at the end.

Lawrence Schnapf

⁵ A Vaughn Index must: (1) identify each document withheld; (2) state the statutory exemption claimed; and (3) explain how disclosure would damage the interests protected by the claimed exemption. See *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). See also *Citizens Comm'n on Human Rights v. FDA*, 45 F.3d 1325, 1326 n.1 (9th Cir. 1995).



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MEMORANDUM SUPPORTING REQUEST FOR OVERSIGHT HEARINGS

This memorandum is prepared in support of the request for the House Committee on Oversight and Government Reform to conduct oversight hearings on compliance with the JFK Records Act by the Executive Departments and Agencies.

I. Background

The JFK Act directed federal agencies to identify, review, process, and transfer to the National Archives all assassination records in their custody search for records relating to the assassination of President Kennedy as well as to transfer those records to the John F Kennedy Assassination Records Collection (“JFK Collection”) at the National Archives and Records Administration (NARA).⁶ The JFK Act also established the Assassination Records Review Board (ARRB) to determine if a record constituted an “assassination record.”⁷

More importantly, the JFK Act mandated that each “assassination record”⁸ be publicly disclosed in full, and be available no later than the date that is 25 years after the date of enactment of the JFK Act (**October 26, 2017**), unless the President of the United States certifies that:

1. continued postponement is made necessary by an identifiable harm to the military defense, intelligence operations, law enforcement, or conduct of foreign relations; and

⁶ 44 U.S.C. 2107 note, Sec. 5(e).

⁷ 44 U.S.C. 2107 note, Sec. 7(i)(2)(A).

⁸ 36 CFR 1290.1; see also 44 U.S.C. § 2107 note, Sec. 3(2)(E)



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2. the identifiable harm is of such gravity that it outweighs the public interest in disclosure.

Section 6 of the JFK Act also requires that any postponement on these grounds must be based on “clear and convincing evidence.”⁹

The JFK Act also required that all postponed or redacted assassination records qualified for a postponement under section 6 be periodically reviewed “by the originating agency and the Archivist” to determine if the justifications for postponement remained valid.¹⁰

Between **September 2014** and **November 2015**, NARA sent notices to all agencies that still had records or portions of records postponed under section 6, reminding them of the JFK Act’s **October 26, 2017** disclosure deadline. According to a report issued by the Office of Inspector General of the National Archives,¹¹ NARA staff attended multi-agency meetings hosted by the National Security Council to urge agencies to review records in accordance with the JFK Act. NARA staff also conducted follow-up meetings with agencies to facilitate this review.¹² In **February 2017**, NARA sent letters to the various agencies requesting a summary of agency review efforts and asking if any records could be immediately released.¹³

In addition, the National Security Council’s Records Access and Information Security Interagency Policy Committee instructed each affected agency to provide by **May 1, 2017**, a memorandum either advising that the agency would not ask for further postponement or that it was requesting the President to certify further postponement pursuant to the JFK Act section.¹⁴ Any such request for further postponement would have to be accompanied by justification mandated by the JFK Act.¹⁵

The statutorily-mandated **October 26, 2017** deadline was supposed to represent the end of the decades-long effort to release all of the records related to the assassination of President Kennedy. Absent any action by the Executive Branch, NARA was to release the remaining assassination

⁹ 44 U.S.C. 2107 note Sec. 6.

¹⁰ 44 U.S.C. 2107 note, Sec. 5(g)(1)–(2).

¹¹ Review of JFK Assassination Records Collection Act of 1992, Special Report No. 18-SR-07(OIG 3/29/2018).

¹² Id.

¹³ Id. The letter reminded the agencies that the JFK ACT does not require waiting until the deadline to release records, and that NARA would prefer to release records on a rolling basis.

¹⁴ 44 U.S.C. 2107 note , Sec 5(g)(2)(D).

¹⁵ Id. *See also* Curtis E. Gannon, Memorandum Opinion for the Counsel to the President, “Temporary Certification Under the President John F. Kennedy Assassination Records Collection Act of 1992” (Office of Legal Counsel, 10/26/2017).



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records. Unfortunately, certain Executive Branch agencies asked President Trump to postpone the disclosure either in whole or in part of approximately 31,000 records.¹⁶

On **October 12, 2017**, the Archivist of the United States wrote to the President expressing “*significant concerns*” about the proposed postponements. The Archivist expressed doubt that agencies had properly applied the statutory standard for postponing disclosure.¹⁷ The Archivist then concluded that:

*“there is insufficient time for NARA and the pertinent agencies to further consider our concerns and identify those certain, specific instances where information could warrant continued postponement”*¹⁸

As a result, on **October 26, 2017**, President Trump issued a memorandum allowing records that agencies had proposed for continued postponement to be temporarily withheld from full public disclosure until no later than April 26, 2018. The purpose of this action was to allow sufficient time to determine if such information warranted further postponement.¹⁹ In issuing this certification, the President wrote:

The American public expects—and deserves—its Government to provide as much access as possible to the President John F. Kennedy Assassination Records (records) so that the people may finally be fully informed about all aspects of this pivotal event.

The President went on to say that:

Any agency that seeks to request further postponement beyond this temporary certification shall adhere to the findings of the Act, which state, among other things, that “only in the rarest cases is there any legitimate need for continued protection of such records.” The need for continued protection can only have grown weaker with the passage of time since the Congress made this finding. Accordingly, each

¹⁶ Memorandum for John A. Eisenberg, Legal Adviser to the National Security Council, from John P. Fitzpatrick, Senior Director for Records, “Access and Information Security Management, National Security Council, Department and Agency Requests for Continued Postponement of Records under the JFK Assassination Records Collection Act” (Oct. 25, 2017) (“NSC Memorandum”).

¹⁷ 44 U.S.C. 2107 note, Sec. 5(g)(2)(D).

¹⁸ Memorandum for the President, from David S. Ferriero, Archivist of the United States, “Re: Concerns Regarding Agency Proposals to Postpone Records Pursuant to Section 5 of the President John F. Kennedy Assassination Records Collection Act of 1992” at 1 (Oct. 12, 2017).

¹⁹ Memorandum of President of the United States, Oct. 26, 2017, 82 F.R. 50307 (10/31/2017).



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*agency head should be **extremely circumspect in recommending any further postponement of full disclosure of records.** [emphasis added]*

On **March 26, 2018**, the Archivist recommended that 13,922 documents of the Central Intelligence Agency, Federal Bureau of Investigation, the Department of Defense and the Department of State and Drug Enforcement Agency be further postponed under Section 5(g)(2) (D) of the JFK Act.²⁰ The Archivist recommendation that any further requests for postponements be made contingent on the agencies making such future requests on a document-by-document based in writing by **April 26, 2021.**²¹

On **April 26, 2018**, President Trump issued a memorandum adopting the recommendation of Archivist to continue withholding certain records until **October 26, 2021** and directed the agencies to re-review each record to determine if any redactions were necessary.²² In particular, the memorandum went on to say that:

*Any agency that seeks further postponement beyond **October 26, 2021**, shall, no later than **April 26, 2021**, identify to the Archivist the specific basis for concluding that records (or portions of records) satisfy the standard for continued postponement under section 5(g)(2) (D) of the Act. Thereafter, the Archivist shall recommend to the President, no later than **September 26, 2021**, whether continued withholding from public disclosure of the identified records is warranted after **October 26, 2021.** [emphasis added]*

II. The Committee Has Statutory Oversight Authority

The JFK Act provides that the Committee and the Senate Committee on Governmental Affairs shall have *continuing oversight jurisdiction* over the disposition of postponed records after termination of the Review Board.²³ Moreover, Section 12(b) of the JFK Act provides that:

²⁰ 44 U.S.C. 2107 note, Sec. 5(g)(2)(D).

²¹ Memorandum for the President, from David S. Ferriero, Archivist of the United States, “Recommendations Concerning Certification of Certain Records Related to the Assassination of President John F. Kennedy” (March 26, 2018) (“2018 Archivist Memorandum”).

²² Memorandum of President of the United States, “Certification for Certain Records Related to the Assassination of President John F. Kennedy” (Apr. 26, 2018), 83 F.R. 19157 (05/02/2018).

²³ 44 U.S.C. 2107 note, Sec. (7)(l)(1).



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The remaining provisions of this Act shall continue in effect until such time as the Archivist certifies to the President and the Congress that all assassination records have been made available to the public in accordance with this Act.

Since the AARB concluded its work in 1998, the Committee has had the authority to conduct oversight hearings. Despite the fact that thousands of assassination records continue to be withheld for alleged national security reasons and the agencies requesting postponement have failed to identify the specific harm posed by each postponed record or how these harms outweigh the public interest in disclosure, the Committee has not conducted any hearings or conducted any investigation to determine if the continued withholding of records complies with the JFK Act much less if the postponements have been based on “*clear and convincing evidence.*”²⁴

III. Both the HOUSE and SENATE have Adopted Resolutions Calling for Release of the Remaining Assassination Records

On **October 4, 2017**, Senators Charles Grassley and Senator Patrick Leahy co-sponsored a Senate resolution calling for “*full public disclosure of documents pertaining to the assassination of President John F. Kennedy*”²⁵ An identical resolution was introduced in the House of Representatives at the same time and was referred to the Committee. Co-sponsors included current chair of the Subcommittee on Government Operations, Congressman Gerald Connolly.²⁶

In sponsoring the House Resolution, Congressman Walter B. Jones said:

After 54 years, there is no reason, for the sake of honesty and integrity in America, that the facts of the JFK assassination should not be made public. Virgil once said, ‘Evil is nourished and grows by concealment.’ It’s time to reveal what happened that awful afternoon in 1963.

IV. Continued Withholding of Assassination Records Violates Other Government Policies Adopted Since the Passage of the JFK Act.

²⁴ 44 U.S.C. 2107 note, Sec. 6.

²⁵ S. Res. 281, 115th Congress (2017-2018) (Referred to Senate Homeland Security and Governmental Affairs on 10/04/2017).

²⁶ H. Res. 556, 115th Congress (2017-2018). Other co-sponsors included Brendan F. Boyle, John Conyers, Anna G. Eshoo, Matt Gaetz, Eleanor Holmes Norton, Marcy Kaptur, Ro Khanna, Walter B. Jones, Bill Pascrell, Jr., Dana Rohrabacher and Louise Slaughter.



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Since the JFK Act was enacted, there has been widespread, bipartisan recognition that the federal government classifies too much information for too long, at great and unnecessary cost to taxpayers.²⁷

In 2000, Congress established the Public Interest Declassification Board (PIDB)²⁸ “to promote the fullest possible public access to a thorough, accurate, and reliable documentary record of significant U.S. national security decisions and activities.” Since 2008, the PIDB has issued a number of reports and recommendations that call for Government-wide reform of the nation’s classification and declassification system.²⁹

A recurring theme in the PIDB Reports is to prioritize and simplify the declassification of records of major historical significance. At many of PIDB Board meetings, there have been continued and prominent calls and suggestions from researchers that the PIDB and National Declassification Center (NDC) review the postponed JFK Records. Indeed, when the PIDB asked for recommendations on priorities of records older than 25 years, 12 of the 13 comments were about declassifying the records related to the assassination of President Kennedy.³⁰

After President Trump’s April 26, 2018 memorandum certifying withholding of JFK Records until **October 26, 2017**, the PIDB Blog said:

*we must note disappointment [with the] **failure of the responsible agencies to meet the legal requirements set by the President John F. Kennedy Assassination Records Collection Act of 1992.... with the 25 years of advance notice afforded by the 1992 Act, it is difficult now to understand why the October 26 deadline passed largely unmet. Certainly, there will be no excuse for a failure by any agency to meet the extended deadline of April 26, 2018, set by the President. The American public deserves no less. We look forward to the completion of the re-***

²⁷ A Vision for the Digital Age: Modernization of the U.S. National Security Classification and Declassification System”, page iii (May 2020).

²⁸ Pub. L. 106-567 , as amended, 50 U.S.C. § 3355a; Pub. L. 116-92, codified at 50 U.S.C. 3161 note.

²⁹ See “A Vision for the Digital Age: Modernization of the U.S. National Security Classification and Declassification System” (May 2020); “The Importance of Technology in Classification and Declassification” (June 2016); “Setting Priorities: An Essential Step in Transforming Declassification” (December 2014); “Transforming the Security Classification System (November 2012)”; “Transforming Classification Policy Forum (May 2011); PIDB Letter to the President (March 6, 2009); “Improving Declassification” (January 2, 2008).

³⁰ <https://transforming-classification.blogs.archives.gov/2013/12/02/new-prioritization-category-topics-older-than-25-years/#comments>.



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*review process that the President has directed and will continue monitoring the release of these records of high historical significance.*³¹ [emphasis added]

On his first day in office, President Obama issued a memorandum to the heads of all departments and agencies on the Freedom of Information Act³² (“FOIA Memo”) directing that agencies should act with a clear presumption of transparency. The President instructed departments and agencies not to withhold information:

*merely because "public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears."*³³

The President also required agencies to respond to FOIA requests "*promptly and in a spirit of cooperation.*" The President further directed agencies to adopt a presumption in favor of disclosure with regard to all FOIA decisions. The President asked the Attorney General to issue FOIA Guidelines for the Executive Branch that "*reaffirm[] the commitment to accountability and transparency.*"³⁴

Attorney General Eric Holder, Jr. then issued his own memorandum (“DOJ FOIA Memo”)³⁵ which established new guidelines for complying with the Freedom of Information Act. In this memo, the Attorney General stated that the principle of openness was the Federal Government’s default position for FOIA issues and that this principle had the following implications:

- An agency should not withhold records merely because it can demonstrate, as a technical matter, that the records fall within the scope of a FOIA exemption; and
- Whenever an agency determines that it cannot make full disclosure of a requested record, it must consider whether it can make partial disclosure.³⁶

³¹ Available at: <https://transforming-classification.blogs.archives.gov/2017/12/18/completion-of-the-jfk-records-rolling-release>.

³² 5 U.S.C. § 552.

³³ Presidential Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act, 74 Fed. Reg. 4683 (Jan. 21, 2009).

³⁴ Id. The Director of the Office of Management and Budget (OMB) subsequently issued “Open Government Directive”, M-10-06 (December 8, 2009).

³⁵ Attorney General Holder’s Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act (March 19, 2019), 74 Fed. Reg. 51879 (Oct. 8, 2009).

³⁶ Id. The DOJ FOIA Memo goes on to state that:

Agencies should always be mindful that the FOIA requires them to take reasonable steps to segregate and release nonexempt information. Even if some parts of a record must be withheld,



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The DOJ FOIA Memo also established a "foreseeable harm" standard for defending agency decisions to withhold information.³⁷

On **December 29, 2009**, President Obama issued Executive Order 13526³⁸ which made a number of significant changes to current information policies including:

- (1) creating a presumption that records older than 25 years are to be automatically declassified;³⁹
- (2) declaring that "no information may remain classified indefinitely";⁴⁰
- (3) providing for automatic declassification of records with permanent historical value that are more than 25 years old subject to certain limited exceptions;⁴¹
- (4) Barring agencies from classifying records to "prevent embarrassment to a person, organization, or agency";⁴²
- (4) requiring agencies to establish and conduct programs for "systematic declassification review" for records of permanent historical value that are exempt from automatic declassification;⁴³ and
- (5) requiring the establishment of a National Declassification Center at the National Archives to streamline declassification processes, and implement standardized training regarding the declassification of records determined to have permanent historical value⁴⁴;

other parts either may not be covered by a statutory exemption, or may be covered only in a technical sense unrelated to the actual impact of disclosure.

³⁷ Id. *See also* "OIP Guidance: President Obama's FOIA Memorandum and Attorney General Holder's FOIA Guidelines – Creating a New Era of Open Government" (posted 4/17/09).

³⁸ Executive Order 13526, "Classified National Security Information", (December 29, 2009); 75 Fed. Reg. 707 (January 5, 2010).

³⁹ Id. at § 1.5(b)-(c) and § 2.2(f).

⁴⁰ Id. at § 1.5(d).

⁴¹ Id. § 3.4. The Executive Order provides that a record may be exempt from automatic declassification unless there is a clear and demonstrable damage to national security if disclosed. §§ 3.3(b)-(d) and (g)-(j).

⁴² Id. at § 1.7(a)(2).

⁴³ Id. at § 3.4.

⁴⁴ Id. at § 3.7.



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On the same day, President Obama issued a memorandum to the heads of executive departments and agencies to implement the executive order. In the memorandum, the President said, *inter alia*,

*I expect that the order will produce measurable progress towards greater openness and transparency in the Government's classification and declassification programs while protecting the Government's legitimate interests, and I will closely monitor the results.*⁴⁵

Congress followed these actions with the FOIA Improvement Act of 2016.⁴⁶ This bipartisan legislation codified the policy established by President Obama in his January FOIA Memo and the DOJ FOIA Memo. The bill mandated that an agency may withhold information only if it *reasonably foresees a specific identifiable harm* to an interest protected by an exemption, or if disclosure is prohibited by law.

V. Public Interest Demands Release of the Remaining Records

A broad swath of historians⁴⁷, former government officials⁴⁸ and other prominent Americans⁴⁹ have requested full release of the records. In 1998, even David Belin, former Warren Commission Counsel and Executive Director of the Rockefeller Commission and one of the staunchest defenders of the Warren Commission's conclusions, asked the ARRB to "*release every single document in CIA files concerning the assassination of President Kennedy and also all of the remaining Warren Commission files (about 2%) that have not previously been released.*"⁵⁰

⁴⁵ Memorandum of December 29, 2009, "Implementation of the Executive Order- Classified National Security Information," 75 Fed. Reg. 733 (Jan. 5, 2010).

⁴⁶ Pub. L. 114-185.

⁴⁷ Steven M. Gillon (professor of history at the University of Oklahoma); John McAdams (political science professor at Marquette University); Gerald McKnight (professor emeritus-Hood College); John Newman (professor of political science at James Madison University); Larry Sabato (director of the University of Virginia Center for Politics) and Peter Dale Scott (professor emeritus at the University of California, Berkeley).

⁴⁸ G. Robert Blakey (former chief counsel of the House Select Commission on Assassinations; Dan Hardway, Esq. (former researcher for HSCA); Douglas Horne (former senior analyst for the Assassinations Records Review Board); Judge Burt Griffin (former Warren Commission attorney); former Senator Gary Hart; Edwin Lopez, Esq. (former HSCA researcher); John T. Orr, Esq. (former DOJ national criminal enforcement director) and Adam Walinsky (Attorney, Department of Justice, legislative assistant and speechwriter to Sen. Robert F. Kennedy).

⁴⁹ The signatories included Robert F. Kennedy, Jr., Alec Baldwin, David Crosby, Daniel Ellsberg, Rob Reiner, Abby Rockefeller, Mort Sahl, Martin Sheen, Oliver Stone, and Kathleen Kennedy Townsend.

⁵⁰ David W. Belin letter to T. Jeremy Gunn, Executive Director and General Counsel, Assassination Records Review Board (June 16, 1998).



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In 2003 a group of 13 authors holding diverse views on President Kennedy's assassination published an open letter in the *New York Review of Books* asking the CIA to release records relating to career CIA operations officer George E. Joannides, who died in 1990.⁵¹ In 2013, Judge John R. Tunheim (former ARRB chair) called on the CIA to release its withheld records.⁵² As recently as January 22, 2019, more than 60 prominent American citizens released a petition asking Congress to reopen the investigations into the assassinations.⁵³

When Congress enacted the JFK Act in 1992, it said:

*"most of the records related to the assassination of President John F. Kennedy are almost 30 years old, and only in the rarest cases is there any legitimate need for continued protection of such records."*⁵⁴

It is now 57 years since the assassination. The continued failure to release the remaining assassination records violates both the letter and spirit of the law. It is hard to fathom how any postponed records could pose an identifiable harm to the military defense, intelligence operations, law enforcement, or conduct of foreign relations after 57 years.

Distrust in our institutions is at an all-time low. Many historians have pointed to the secrecy surrounding the JFK assassination as the moment when Americans began to lose faith with our government. Conducting public oversight hearings on the JFK Record Act can be a first step in restoring trust in our political system. It is time for the Committee to exercise its oversight authority.

⁵¹ JFK's Assassination, *New York Review of Books* (12/18/2003). The authors included Don DeLillo, Norman Mailer, Jefferson Morley, Gerald Posner, and Anthony Summers. Other authors who have called for the release of the remaining JFK assassination records include James W. Douglass, Jacob G. Hornberger, Dick Russell, Philip Shenon, David Talbot and Josiah Thompson.

⁵² Troves of Files on JFK assassination remain secret, *Boston Globe* (11/25/13).

⁵³ <https://www.americantruthnow.org/signatories>.

⁵⁴ 44 U.S.C. 2107 note, Sec. 12(a)(7).