

## What President Trump Can Do to Fulfill His Campaign Promise on the JFK Files

Congress can help prevent a repeat of 2017-2018, when secrecy prevailed over the public interest

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President Donald J. Trump shakes hands with National Security Adviser H.R. McMaster, Friday, Apr. 6, 2018, to bid him farewell. McMaster had tendered his resignation from his post in March. (Credit: Joyce N. Boghosian/Public Domain)

During the 2024 presidential campaign, President-elect Donald Trump stated on [several occasions](#) that he would [release the rest](#) of the withheld records related to the assassination of President John F. Kennedy.

Based on what I learned from the documents produced in my lawsuit against the National Archives involving his decisions to twice postpone disclosure during his first term, Trump will need to establish a different process if he truly intends to release all of the information the government possesses about President Kennedy's assassination.

### **Outstanding JFK Searches**

Congress unanimously enacted the President John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act) to provide for the “expeditious public disclosure” of records held by the

government relating to the assassination of President Kennedy. To accomplish these goals, Congress directed government offices and executive agencies to scour their files for records in their possession related to the assassination and to expeditiously transfer them to the National Archives and Records Administration (Archives).

In turn, Congress instructed the National Archives to establish the President John F. Kennedy Assassination Records Collection (JFK Collection) to house records and create a central database so that the public could easily review these records.

The JFK Act created a presumption of immediate disclosure of assassination records, so that the records had to be declassified unless the agency that possessed or created the record could demonstrate through “clear and convincing evidence” that one of the seven enumerated harms of Section 6 of the JFK Act existed and was of such gravity that it outweighed the strong public interest in disclosure.

To enforce this presumption of disclosure, the JFK Act created the Assassination Records Review Board (ARRB). From 1994 to 1998, that panel was empowered to determine if particular information constituted an assassination record, and to conduct an independent review of the information the agencies wished to postpone. The ARRB could either sustain the agency request to postpone the information or overrule the agency request and direct the Archives to publicly disclose the information.

If the ARRB sustained the postponement of information, it would establish a date no later than October 26, 2017, when the record could be released. Equally important, the ARRB had the authority to direct government offices to make available “additional information and records” that did not fall within the definition of an assassination record if the Review Board believed this information was needed to fulfill its responsibilities under the Act.

At the time the ARRB ceased operating in 1998, there were outstanding record search requests to the CIA, FBI, the Immigration and Naturalization Service (INS) and the JFK Library for documents relating to records that had been taken from the Oval Office by Attorney General Robert F. Kennedy hours after the assassination, and that might qualify as assassination records. These requests were never fulfilled.

The National Archives, the ARRB and the CIA entered into a memorandum of understanding, providing that the Archives would be responsible for supervising CIA compliance with the outstanding search requests. Unfortunately, the Archives did not follow up on the search requests that remained outstanding after the ARRB’s termination.

For all postponed assassination records, the JFK Act mandated that each assassination record be publicly disclosed in full by no later than October 26, 2017, unless the President certified that continued postponement was necessary because of an identified harm to the military defense, intelligence operations, law enforcement, or conduct of foreign relations, and that the harm was of such gravity that it outweighed the public interest in disclosure.

On the eve of the October 26, 2017 statutory deadline to release the remaining postponed assassination records, Trump issued an executive order instructing the Archives to temporarily

postpone the public disclosure of an unspecified number of unidentified assassination records for six months.

He then issued a second executive order on April 26, 2018, instructing the Archives to further postpone the public disclosure of a still-unspecified number of unidentified assassination records for another three and a half years beyond the statutory deadline.

### **After the JFK Review Board**

Because the Archives does not have original classification authority under the National Security executive order, it relies on the agencies that have “equities” in the classified information to conduct declassification reviews. In the spring of 2017, the Archives developed guidance in consultation with the National Security Council (NSC) for the 17 agencies and departments that had equities in postponed assassination records.

The guidance provided that the postponed records would be automatically released on October 26, 2017, unless the agencies requested further postponements based on the criteria set forth in the guidance. Agencies seeking further postponements were directed to tender their requests to the Assistant to the President for National Security Affairs (APNSA) by May 1, 2017. At the time, the APNSA was Lt. Gen. H. R. McMaster, who had succeeded Lt. Gen. Michael Flynn in February.

The NSC Senior Director for Records Access and Information Security Management was the designated official to coordinate with the agencies seeking continued postponement.

The Archives guidance further provided that within 30 days of an agency's/department's submission of a request for continued postponement, the NSC “may” seek input from the Archives regarding the request, including requests for an explanation as to why the Archives concurred with or recommended against continued postponement. However, the APNSA would make the final recommendation for postponement to the president.

During the summer of 2017, the Archives objected to postponement requests by the FBI and CIA, but the NSC overruled these objections. Several drafts of an executive order postponing the deadline were circulated by the NSC to the Archives and representatives of the 17 agencies involved in the review under the JFK Act.

Although the Archives had objected to the postponement requests, the APNSA — through his designated representative — instructed the Archivist in September 2017 to draft a memo requesting a six-month extension. At this point, in order to maintain its relationship with the intelligence community, the Archives fell on its sword.

The Archives not only drafted the memo requested by the APNSA. It also agreed to the edits that the NSC made. As it turned out, Trump posted on Twitter on October 24, 2017, that all the JFK Records were going to be released in two days, but the final version of the executive order was already being prepared for his signature.

This process was repeated in January-March 2018.



Rep. Mike Pompeo (R-Kan.), pictured in 2016, became Trump’s first CIA director in 2017 and urged him not to release JFK files. He was not selected to serve in Trump’s upcoming cabinet. (Credit: [Office of the President-elect](#))

The Archives advised the agencies that further postponements would have to meet a “high bar.” Following further requests for postponements, the NSC instructed the Archivist to draft a memo requesting further postponements. After 13 drafts, the final memo was sent to the president requesting postponement until October 26, 2021.

### **Changes for Trump 2.0**

While it would seem that Trump could simply release the withheld assassination records by a stroke of the pen, signing and issuing an executive order, the reality is that presidents do not draft their executive orders. Instead, they are drafted for the signature of the president by either the Office of White House Counsel or, more frequently, by the agency with subject-matter jurisdiction. During the first Trump administration, the NSC drafted the executive orders postponing the JFK assassination records.

The representatives of the 17 agencies/departments participating in the 2017-18 JFK Act postponements had connections to the intelligence community. That meant the reviews were being done solely through the lens of the potential harms to national security without attention to the statutory requirement of balancing the harms against the public interest in disclosure. Indeed, the only participant in this process that represented the public interest was the Archives — and its views were consistently overruled by the NSC.

Now, any executive order would have to rescind President Biden's 2023 order. That order certified continued postponement of assassination records, directed that future declassification would be handled by National Declassification Center (NDC), and declared that the executive order was the "final certification" required under the JFK Act. More specifically, any Trump executive order must also revoke the "[Transparency Plans](#)" prepared by the agencies.

The "Transparency Plans" represent the wish list of the agencies as to what future events or circumstances would trigger declassification review as opposed to automatic disclosure. The purpose of the "Transparency Plans" was to eliminate the need for the president— or more accurately NSC staff — to conduct these periodic certifications of postponed records. Indeed, most of the "Transparency Plans" provide that such declassification reviews will not be triggered until at least 2040, and some events are unlikely to ever occur.

If and when the "Transparency Plans" are revoked, the agencies will likely appeal to the president to continue postponing disclosure based on the statutory criteria. Thus, if Trump is serious about releasing the rest of the records in the JFK Collection, he needs to assign responsibility for reviewing the postponement requests and drafting any executive order to personnel who are unaffiliated with the intelligence community.

To ensure that the NSC does not hijack the JFK Act review process like it did during Trump 1.0, Mr. Trump must designate an individual or entity with final decision-making authority in the room who represents and advocates for the public interest. What is needed is a person or group within the Executive Office of the President who can serve the role that the ARRB had to review and sustain/reject agency postponement requests.

The Archives tried to serve this role during the first Trump Administration but was not given the express authority to make final postponement decisions. I would recommend that any future executive order either specifically designate that the Archivist be assigned this role or task the Archives with selecting a committee of subject-matter experts on the JFK assassination to serve as an administrative version of the ARRB.

### **A Role for Congress**

Congress has the power to revoke an executive order, and it has done so in the past.

The 119th Congress can:

- expressly revoke President Biden's 2023 executive order;
- direct the agencies to release all postponed records within 30 days of the enactment;
- expressly declassify the remaining withheld files of the Church Committee and House Select Committee on Assassinations;
- complete the outstanding ARRB search requests; and
- create a new JFK review board, call it ARRB 2.0, to finish the process of searching for outstanding government records that have not been transferred to the collection, such as

the George Joannides files and the FBI tapes from the CAM-TEX sting operation of New Orleans Mafia boss Carlos Marcello that have been sealed since the mid-1980s.

In lieu of creating an ARRB 2.0, Congress could specifically grant the Archives original declassification authority over information determined to be assassination records. That way, the agencies could not try to run out the clock as they have done with every investigative body that has been created since the assassination.