

93d Congress }  
2d Session }

COMMITTEE PRINT

FREEDOM OF INFORMATION ACT  
SOURCE BOOK: LEGISLATIVE MATERIALS,  
CASES, ARTICLES

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SUBCOMMITTEE ON  
ADMINISTRATIVE PRACTICE AND PROCEDURE  
OF THE  
COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE



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LETTER OF TRANSMITTAL

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UNITED STATES SENATE,  
COMMITTEE ON THE JUDICIARY,  
Washington, D.C.

HON. JAMES O. EASTLAND,  
*Chairman, Senate Committee on the Judiciary,*  
*Washington, D.C.*

DEAR MR. CHAIRMAN: Last week the Freedom of Information Act celebrated its sixth year of operation. During that period of time the act has brought about numerous changes in policies, as well as in practices and procedures, of agencies with regard to the disclosure of information to the public. While these changes have been beneficial, the expectation of Congress that the doors of government would be opened to the public has not been fully realized. Thus around two hundred lawsuits have been instituted against the government to require disclosure of information, and this Subcommittee is faced with the task of fashioning legislation to clarify and strengthen the law.

The important role of the Freedom of Information Act in maintaining our system of government for and of the people, and the recent increase in interest in the problems raised by government secrecy have given rise to the presently heavy demand for background and materials on the history and operation of the act. The Subcommittee on Administrative Practice and Procedure has prepared, in response to this demand, the appended documents and materials which provide a basic source book for those members of Congress and the public wishing to learn about and to use the Freedom of Information Act. I request that the attached be printed as a committee print.

Sincerely,

EDWARD M. KENNEDY,  
*Chairman.*

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## INTRODUCTION

On July 4, 1966, the Freedom of Information Act was signed into law. The act, which became effective on July 4, 1967, was designed to reverse earlier law under which government agencies considered themselves free to withhold information from the public under whatever subjective standard could be articulated for the occasion. Most importantly, the Freedom of Information Act (FOIA)<sup>1</sup> set a standard of openness for government from which only deviations in well-defined areas would be allowed. The FOIA then went on to define those areas in a series of nine "exemptions." Finally, it provided a remedy for the wrongful withholding of information: the person requesting information from the government could take his case to court.

President Lyndon B. Johnson, in his bill-signing statement, articulated the spirit which the Freedom of Information Act was intended to instill in all areas of government:

This legislation springs from one of our most essential principles: a democracy works best when the people have all the information that the security of the Nation permits. No one should be able to pull the curtains of secrecy around decisions which can be revealed without injury to the public interest. \* \* \* I signed this measure with a deep sense of pride that the United States is an open society in which the people's right to know is cherished and guarded.

But, as recognized by Congress and the Executive, and as spelled out by Attorney General Ramsey Clark in a memorandum explaining the Act,<sup>2</sup> the law "is not wholly self-explanatory or self-executing. Its efficacy is heavily dependent on the sound judgment and faithful execution of those who direct and administer our agencies of government."

Because the execution of this law by "those who direct and administer our agencies of government" has been substantially less than "faithful," testimony at recent hearings of the Subcommittee on Administrative Practice and Procedure on Freedom of Information<sup>3</sup> has suggested "that the act has become a 'freedom from information' law, and that the curtains of secrecy still remain tightly drawn around the business of our government." Judicial decisions and recent House subcommittee hearings and report substantiate this conclusion.<sup>4</sup>

In his 1953 book entitled "The People's Right to Know," Harold L. Cross, writing for the Committee on Freedom of Information of the

<sup>1</sup> 5 U.S.C. § 552 (printed below in full at p. 11).

<sup>2</sup> Attorney General's Memorandum on the Public Information Section of the Administrative Procedure Act. U.S. Dept. Justice, June 1967 (printed below at page 194).

<sup>3</sup> *Executive Privilege, Government Secrecy and Freedom of Information*. Hearings before the Subcommittees on Administrative Practice and Procedure and Separation of Powers of the Committee on the Judiciary and the Subcommittee on Intergovernmental Relations of the Committee on Government Operations, U.S. Senate, vol. I (April 10, 11, 12, May 8, 9, 10 and 16, 1973), vol. II (June 7, 8, 11 and 26, 1973), and vol. III (Appendices).

<sup>4</sup> *U.S. Government Information Policies and Practices—Administration and Operation of the Freedom of Information Act*, Hearings before the Subcommittee on Foreign Operations and Government Information, Committee on Government Operations, House of Representatives, 92d Congr., 2d Sess. (parts 4-6); *Administration of the Freedom of Information Act*, H. Rept. No. 92-1419, Committee on Government Operations, 92d Cong., 2d Sess., Sept. 20, 1972; see summaries of court decisions below in part II.

American Society of Newspaper Editors, observed "the dismaying, bewildering fact" that "in the absence of a general or specific act of Congress creating a clear right to inspect . . . there is no enforceable legal right in public or press to inspect any federal non-judicial record." The FOIA not only created this "clear right" in the public and press, but also made it enforceable. Thus the Act provided that whenever a person believed his request for information was wrongfully denied, he could take his case to the federal courts. The law specifically provides:

On complaint, the district court of the United States . . . has jurisdiction to enjoin the agency from withholding agency records and to order the production on any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo and the burden is on the agency to sustain its action. In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee. . . .

In May 1968 this Subcommittee published a "Ten Months Review" of the Freedom of Information Act,<sup>5</sup> in which it observed that a pattern of court decisions under this act had not yet emerged although, of the eleven cases decided, "four have held in favor of disclosure and seven against." Now, some six years after the effective date of the FOIA, over two hundred suits have been filed under the act. Summary briefs of the substantive decisions handed down under this Act are contained in this volume in part II.

A House Subcommittee, analyzing the decisions under the FOIA, observed that the courts have generally been reluctant to order the disclosure of government information falling within the first exemption of the act, information "specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy," and within the seventh, "investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency." On the other side, courts have generally ruled against government withholding of information alleged to fall within the fourth and fifth exemptions relating to trade secrets and internal communications.<sup>6</sup> Nonetheless, in his general observations concerning the cases decided under the FOIA, Attorney General Elliot Richardson, appearing before the Senate Subcommittee on Administrative Practice and Procedure, observed that "the courts have resolved almost all legal doubts in favor of disclosure."<sup>7</sup>

It should be emphasized that the exemptions in the FOIA were not intended by Congress to be used either to prohibit disclosure of information or to justify automatic withholding of information. Rather, they merely mark the outer limits of information that *may* be withheld where the agency makes an affirmative determination that the public interest and the specific circumstances presented dictate that the information *should* be withheld. Agencies have been slow to adopt this attitude, but enlightened judicial decisions reflect this approach to interpreting the force of the FOIA exemptions.

Most significantly, the courts appear to adopt and reinforce at each opportunity the congressional intent underlying passage of the Freedom of Information Act. For example, one Court of Appeals, after

<sup>5</sup> *The Freedom of Information Act (Ten Months Review)*, Comm. Print Submitted by the Subcommittee on Administrative Practice and Procedure to the Committee on the Judiciary of the U.S. Senate, 90th Cong., 2d Sess., May 1968.

<sup>6</sup> H. Rept. No. 92-1419, *supra* note 4 at 71.

<sup>7</sup> Hearings, *supra* note 3 at vol. II, p. 215.

ordering disclosure of documents requested by the plaintiff but withheld by the government in a recent case, observed :

Congress passed the Freedom of Information Act in response to a persistent problem of legislators and citizens, the problem of obtaining adequate information to evaluate federal programs and formulate wise policies. Congress recognized that the public cannot make intelligent decisions without such information, and that governmental institutions become unresponsive to public needs if knowledge of their activities is denied to the people and their representatives. The touchstone of any proceedings under the Act must be the clear legislative intent to assure public access to all governmental records whose disclosure would not significantly harm specific governmental interests. The policy of the Act requires that the disclosure requirement be construed broadly, the exemptions narrowly.<sup>8</sup>

Bills have been introduced in the 93rd Congress, in both the House and the Senate,<sup>9</sup> to strengthen and clarify the Freedom of Information Act. Even with such legislation, it is clear that the public will have to approach government agencies armed with a thorough knowledge of the Act and the interpretations thereunder, and will on occasion continue to have to resort to the courts for enforcement of congressional disclosure mandates. This Source Book is designed to provide the public with the arsenal necessary to obtain maximum disclosure from the departments and agencies of government. Part I contains legislative history materials: the text of the act, references to each stage of the legislative proceedings leading to enactment, the full text of the House and Senate reports, and a brief discussion of the legislative history. Part II contains comprehensive indices and cross-references to cases construing the act and summary briefs of the substantive decisions under the FOIA through February 1974. Part III contains a selected bibliography of articles discussing the Freedom of Information Act, the Attorney General's memorandum on the act, and reprints of three comprehensive discussions of the act. Part IV contains the FOIA Regulations of the Department of Justice, which were promulgated as models for agency regulations generally. The subcommittee intends to update this Sourcebook periodically; comments, suggestions, and references useful to this objective are invited.

<sup>8</sup> *Soucie v. David*, 448 F. 2d 1067, 1080 (D.C. Cir. 1971).

<sup>9</sup> H.R. 5425; H.R. 4960; S. 1142; H.R. 12471; S. 2543. On February 21, 1974, the House Committee on Government Operations reported favorably H.R. 12471 to the House of Representatives. On February 26, 1974, the Senate Subcommittee on Administrative Practice and Procedure reported favorably S. 2543 to the full Judiciary Committee.

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## DISCUSSION OF THE LEGISLATIVE HISTORY OF THE FREEDOM OF INFORMATION ACT

Recognition of the people's right to know what their government is doing by access to government information can be traced back to the early days of our nation. For example, in a letter written by James Madison in 1822 the following often-cited expression can be found:

A popular Government without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance; And the people who mean to be their own Governors, must arm themselves with the power, which knowledge gives.<sup>1</sup>

A case has even been made that at the time our Constitution was written the people's "right to know" was such a fundamental right that it was taken for granted and not explicitly included therein, and that some express terms in the Constitution nevertheless can be pointed to as demonstrating an intent to keep secrecy in government at a minimum and implying a recognition of the people's right to information about their Government.<sup>2</sup>

The first Congressional attempt to formulate a general statutory plan to aid in free access occurred in 1946 with the enactment of section three of the Administrative Procedure Act.<sup>3</sup>

The Congressional intent seems apparent from the report of the House Judiciary Committee:

The section has been drawn upon the theory that administrative operations and procedures are public property which the general public, rather than a few specialists or lobbyists, is entitled to know or have ready means of knowing with definiteness assurance.<sup>4</sup>

The section was to become effective on September 11, 1946. On July 15, 1946, the Department of Justice distributed to all agencies a twelve-page memorandum interpreting this section. In 1947, this memorandum, together with similar memorandums interpreting other sections of the act, were issued in an Attorney General's Manual and declared in that aim of this section was "to assist the public in dealing with administrative agencies to make their administrative materials available in precise and current form."<sup>5</sup> Significantly, it noted that Congress had left up to each agency the decision on what information about the agency's actions was to be classified as "official records."<sup>6</sup>

Soon after the 1946 enactment, it became apparent that, in spite of the clear intent of the Congress to promote disclosure, some of its provisions were vague and that it contained disabling loopholes which

<sup>1</sup> Letter from James Madison to W. T. Barry, Aug. 4, 1822, in *The Complete Madison* (Padover ed. 1953) at 337.

<sup>2</sup> Hennings, Jr. *Constitutional Law: The People's Right to Know*, 45 A.B.A.J. 667 (1959).

<sup>3</sup> June 11, 1946 ch. 324, Section 3, 60 Stat. 238, reprinted below at page 114.

<sup>4</sup> H. Rep. No. 752, 79th Cong. 1st Sess. 198 (1945). See also, S. Rep. No. 752, 79th Cong. 1st Sess. 12 (1945) and H.R. Rep. No. 1980, 79th Cong., 2d Sess. 17-18 (1946).

<sup>5</sup> Attorney General's Manual on the Administrative Procedure Act (1947) at 17.

<sup>6</sup> *Id.*, at 24.

made the statute, in effect, a basis for withholding information. Critics pointed to the broad standards of the section, such as, "[a]ny function . . . requiring secrecy in the public interest," "any matter relating solely to the internal management of an agency" "required for good cause to be held confidential," "matters of official record," "persons properly and directly concerned" and "except information held confidential for good cause found" as leaving the departments and agencies in a position to withhold information for any purpose.<sup>7</sup> One commentator has attributed the failure of the 1946 enactment to two reasons:

First, the former section three failed to provide a judicial remedy for wrongfully withholding information, thus allowing capricious administrative decisions forbidding disclosure to go unchecked. Second, and more importantly, section three of the APA imposed several major restrictions on free disclosure. Acting under "color of law," an administrator was empowered to withhold information "requiring secrecy in the public interest;" when the person seeking disclosure was not "properly and directly concerned," or where the information was "held confidential for good cause found;" and "when the information sought was related to the internal management" of a government agency or department. These four restrictive and nebulously drafted clauses provided agencies and departments with pervasive means of withholding information."<sup>8</sup>

The Administrative Procedure Act had been in operation less than ten years when a Hoover Commission task force recommended minor changes in the public information section. Two bills were introduced in the 84th Congress to carry out the minimal task force recommendations,<sup>9</sup> but the bills died without even a hearing. In the 85th Congress, the first major revision of the public information provisions was introduced,<sup>10</sup> based on a detailed study by Jacob Scher, Northwestern University expert on press law, who was serving as special counsel to the House Government Information Subcommittee. No action was taken on these bills, but in 1958 a statute was passed amending the Federal "housekeeping" statute, which provides that the head of each department may prescribe regulations not inconsistent with law for governing his department, so as to provide that the statute does not authorize withholding information or records from the public.<sup>11</sup> In the 86th and 87th Congresses, a number of versions of these bills were introduced,<sup>12</sup> and although interest was aroused and some hearings held, none appear to have received serious considerations in either house.

<sup>7</sup> Caron, Jr., *Federal Procurement and the Freedom of Information Act*, 20 Fed. B.J. 271 (1968). Also, see S. Rep. No. 1219, 88th Cong., 2d Sess. 10 (1964).

<sup>8</sup> Comment, *The Freedom of Information Act: A Critical Review*, 38 Geo. Wash. L. Rev. 150, 151-152 (1969).

<sup>9</sup> S. 2504, 84th Cong., 1st Sess. (1955) introduced by Senator Wiley, and S. 2541, 84th Cong., 1st Sess. (1955) introduced by Senator McCarthy.

<sup>10</sup> H.R. 7174, 85th Cong., 1st Sess. (1957) introduced by Representative Moss; S. 2148, 85th Cong., 1st Sess. (1957) introduced by Senator Hennings; and S. 4094, 85th Cong., 2d Sess. (1958) introduced by Senators Ervin and Butler.

<sup>11</sup> P.L. 85-619, 72 Stat. 547 (1958), now found at 5 U.S.C. section 301 (1970).

<sup>12</sup> For example, S. 186, 86th Cong., 1st Sess. (1959) introduced by Senator Hennings (this bill was the same as S. 4094, 85th Cong.), S. 1070, 86th Cong., 1st Sess. (1959) introduced by Senators Ervin and Butler; S. 2780, 86th Cong., 2d Sess. (1960) introduced by Senator Hennings (a revision of S. 186); S. 1887, 87th Cong., 1st Sess. (1961) introduced by Senator Ervin; S. 1567, 87th Cong., 1st Sess. (1961) introduced by Senators Hart, Long, and Proxmire; S. 1907, 87th Cong., 1st Sess. (1961) introduced by Senator Proxmire; S. 3410, 87th Cong., 2d Sess. (1962), introduced by Senators Dirksen and Carroll; and H.R. 9926, 87th Cong., 2d Sess. (1962) introduced by Representative Walter.

In the 88th Congress, the movement to amend section 3 can be said to have begun in earnest. On June 4, 1963, two bills were introduced in the Senate. The first of these was S. 1663<sup>13</sup> which, if it had passed, would have replaced the entire Administrative Procedure Act. The second bill S. 1666<sup>14</sup> was identical to section 3 of S. 1663, and aimed at amending only section 3 of the Act. The reason for introducing both bills was to focus attention on the need to make the revision and to expedite action in that regard.<sup>15</sup> Senate hearings were held on S. 1666 and section 3 of S. 1663 in October, 1963.<sup>16</sup> To remedy the weakness of existing law, the Senate Report stated the purpose of S. 1666 as: ". . . to eliminate such phrases, to establish a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language and to provide a court procedure by which citizens and the press may obtain information wrongfully withheld."<sup>17</sup> Following the 1963 hearings, several revisions were made in S. 1666, and after additional hearings were conducted in July of 1964,<sup>18</sup> the bill underwent further modifications.<sup>19</sup> This revised version of S. 1666 was passed by the Senate on July 28, 1964,<sup>20</sup> but no action was taken by the House thereon before adjournment. In the 89th Congress, on February 17, 1965, a further modified form of S. 1666 was introduced in the Senate as S. 1160<sup>21</sup> and in the House of Representatives as H.R. 5012.<sup>22</sup> The House held hearings on March 30, 31, April 1, 2, and 5, 1965<sup>23</sup> and the Senate on May 12, 13, 14, and 15, 1965.<sup>24</sup> The Senate passed S. 1160, as amended, on October 13, 1965.<sup>25</sup> The House of Representatives then passed this bill on June 20, 1966.<sup>26</sup>

The House Report on S. 1160<sup>27</sup> stated what the House considered the purposes and intentions of the bill, but appears at places to be

<sup>13</sup> S. 1663, 88th Cong., 1st Sess. (1963) introduced by Senators Dirksen and Long.

<sup>14</sup> S. 1666, 88th Cong., 1st Sess. (1963) introduced by Senator Long and co-sponsored by Senators Bartlett, Bayh, Boggs, Case, Dirksen, Ervin, Fong, Gruening, Hart, Keating, Kefauver, Metcalf, Morse, Moss, Nelson, Neuberger, Proxmire, Ribicoff, Smathers, Symington, and Walthers.

<sup>15</sup> 109 Cong. Rec. 9958 (1963) (remarks of Senator Long).

<sup>16</sup> *Hearings on the Administrative Procedure Act Before the Subcommittee on Administrative Practice and Procedure of the Senate Committee on the Judiciary*, 88th Cong., 1st Sess. (1963).

<sup>17</sup> S. Rep. No. 1219, 88th Cong., 2d Sess. (1964); 110 Cong. Rec. 17089 (1964) (remarks of Senator Mansfield).

<sup>18</sup> *Hearings on the Administrative Procedure Act Before the Subcommittee on Administrative Practice and Procedure of the Senate Committee on the Judiciary*, 88th Cong., 2d Sess. (1964).

<sup>19</sup> *Note, Comments on Proposed Amendments to Section 3 of the Administrative Procedure Act: The Freedom of Information Bill*, 40 Notre Dame L. 417, 419 (1965).

<sup>20</sup> 110 Cong. Rec. 17089 (1964).

<sup>21</sup> S. 1160, 89th Cong., 1st Sess. (1965) introduced by Senators Long, Anderson, Bartlett, Bayh, Boggs, Burdick, Case, Dirksen, Ervin, Fong, Hart, Metcalf, Morse, Moss, Nelson, Neuberger, Proxmire, Ribicoff, Smathers, Symington, Tydings, and Yarborough.

<sup>22</sup> H.R. 5012, 89th Cong., 1st Sess. (1965) introduced by Representative Moss. The following identical bills were also introduced in the House on the same day or early in the session: H.R. 5013, introduced by Representative Fascell; H.R. 5014 by Representative Macdonald; H.R. 5015 by Representative Griffin; H.R. 5016 by Representative Reid; H.R. 5017 by Representative Rumsfeld; H.R. 5018 by Representative Edmondson; H. 5019 by Representative Ashley; H.R. 5020 by Representative McCarthy; H.R. 5021 by Representative Reid; H.R. 5237 by Representative Gibbons; H.R. 5406 by Representative Leggett; H.R. 5520 by Representative Scheuer; H.R. 5583 by Representative Patten; H.R. 6172 by Representative Mosher; H.R. 6739 by Representative Edwards; H.R. 7010 by Representative Widnall; and H.R. 7161 by Representative Erlenborn.

<sup>23</sup> *Hearings on Federal Public Records Law Before a Subcommittee of the House Committee on Government Operations*, 89th Cong., 1st Sess. parts 1 and 2 (1965).

<sup>24</sup> *Hearings on Administrative Procedure Act Before the Subcommittee on Administrative Practice and Procedure of the Senate Committee on the Judiciary*, 89th Cong., 1st Sess. (1965). See S. Rep. No. 813, 89th Cong., 1st Sess. (1965).

<sup>25</sup> 111 Cong. Rec. 26821 (1965).

<sup>26</sup> 112 Cong. Rec. 13661 (1966).

<sup>27</sup> H.R. Rep. No. 1497, 89th Cong., 2d Sess. (1966), reprinted below at page 22.

inconsistent not only with the Senate Report but also with the explicit language of the statute. Professor Kenneth Culp Davis, a leading commentator on the Freedom of Information Act, observed that "In general, the Senate committee is relatively faithful to the words of the Act, and the House committee ambitiously undertakes to change the meaning that appears in the Act's words. The main thrust of the House committee remarks that seem to pull away from the literal statutory words is almost always in the direction of non-disclosure."<sup>28</sup> Professor Davis continues:

A fundamental question about legislative history, affecting almost all the use of legislative history of this Act, is whether the House report, written after the Senate had passed the bill and therefore not taken into account by the Senate, can be given the same weight as the Senate report, known to both the Senate and the House. The question takes on added importance because of the sharp differences between the two reports and because of the constant reliance by the Attorney General's Memorandum on the House report. Two courts so far have passed upon this question, both taking the same view. One said that the House report "represents the thinking of only one house, and to the extent that the two reports disagree, the surer indication of congressional intent is to be found in the Senate report, which was available for consideration in both houses."<sup>29</sup> The other said that it "accepts the Senate reading of the statute since its report was before both houses of the Congress."<sup>30</sup> P.L. 90-23, 81 Stat. 54, was enacted on June 5, 1967 in order to incorporate into title 5 of the United States Code, without substantive change, the provisions of P.L. 89-487.<sup>31</sup> Technical changes in language were made to conform therewith.

In June, 1967, the Attorney General issued a detailed and comprehensive memorandum for the executive departments and agencies to assist them in fulfilling their obligation under the new Act and to correlate the text thereof with its relevant legislative history.<sup>32</sup>

It has been observed that the Attorney General's Memorandum relies primarily on language of the more restrictive House report. One court observed:

The Attorney General's conclusions do not have the weight of a contemporaneous administrative interpretation since he is not charged with administering the Act. He recognized, moreover that definitive resolution of some ambiguities—perhaps those presented here—would have to await court rulings. The analysis of exemption (2) by the Attorney General fails to discuss the Senate Report. (Footnotes omitted.)<sup>33</sup>

Thus while the Attorney General's Memorandum is instructive on many points of interpretation of the Act, it should properly be considered *not* part of the legislative history but only an excellent secondary source.

<sup>28</sup> Davis, K. C., *Administrative Law Treatise* (Supplement) § 3A.2.

<sup>29</sup> *Benson v. General Services Administration*, 289 F. Supp. 590, 595 (W.D. Wash. 1968), affirmed on other grounds, 415 F. 2d 878 (9th Cir. 1969).

<sup>30</sup> *Consumers Union of United States v. Veterans Administration*, 301 F. Supp. 796, 801 (S.D.N.Y. 1969).

<sup>31</sup> S. Rep. No. 248, 90th Cong., 1st Sess. (1967). The complete text of 5 U.S.C. section 552 (1970) is reproduced below at page 11.

<sup>32</sup> Attorney General, United States Department of Justice, *Attorney General's Memorandum on the Public Information Section of the Administrative Procedure Act* (June 1967), reprinted below at page 194.

<sup>33</sup> *Consumers Union of United States v. Veterans Administration*, 301 F. Supp. 796, 801 (S.D.N.Y. 1969); see *Benson v. General Services Administration*, 289 F. Supp. 590, 595 (W.D. Wash. 1968), aff'd on other grounds, 415 F. 2d 878 (9th Cir. 1969); *Soucie v. David*, 448 F. 2d 1067, 1077 (D.C. Cir. 1971). See also *Getman v. NLRB*, 450 F. 2d 670 (D.C. Cir. 1971).

## SUMMARY OF LEGISLATIVE HISTORY

- I. Freedom of Information Act, 5 U.S.C. 552 (P.L. 90-23, 90th Congress, H.R. 5357, June, 1967).\*
- II. Committee Reports on H.R. 5357 (90th Congress):
  - A. H. Rept. No. 125, 90th Cong., 1st Sess., Committee on the Judiciary, March 14, 1967.\*
  - B. S. Rept. No. 248, 90th Cong., 1st Sess., Committee on the Judiciary, May 17, 1967.
- III. Congressional Record References on H.R. 5357 (90th Congress):
  - A. Considered and passed House, April 3, 1967, 113 Cong. Rec. 8109.\*
  - B. Considered and passed Senate, amended, May 19, 1967, 113 Cong. Rec. 13253.
  - C. House agreed to Senate amendments, May 25, 1967, 113 Cong. Rec. 14056.
- IV. Freedom of Information Act (before codification), 80 Stat. 250 (P.L. 89-487, 89th Congress, S. 1160, July 4, 1966).
- V. Committee reports on S. 1160 (89th Congress):
  - A. S. Rept. No. 813, 89th Cong., 1st Sess., Committee on the Judiciary, October 4, 1965.\*
  - B. H. Rept. No. 1497, 89th Cong., 2nd Sess., Committee on Government Operations, May 9, 1966.\*
- VI. Congressional Record References on S. 1160 (89th Congress):
  - A. Considered and passed Senate, October 13, 1965, 111 Cong. Rec. 26820.
  - B. Considered and passed House, June 20, 1966, 112 Cong. Rec. 13007.\*
- VII. Senate Passage—88th Congress:
  - A. S. Rept. No. 1219, 88th Cong., and 2nd Session (S. 1666).\*
  - B. Considered and passed Senate, July 28, 1964, 110 Cong. Rec. 17086.\*
  - C. On motion to reconsider, July 31, 1964, 110 Cong. Rec. 17666.\*
- VIII. Hearings:
  - A. Senate Committee on the Judiciary, Hearings on S. 1160, May 12, 13, 14, and 21, 1965.
  - B. Senate Committee on the Judiciary, Hearings on S. 1663, July 21, 22 and 23, 1964.
  - C. House Committee on Government Operations, Hearings on H.R. 5012, March 30 and 31, April 1, 2 and 5, 1956 (and Appendix).
- IX. Prior law:
  - A. Revised Statutes, sec. 161.\*
  - B. Public Law 85-619, amending Revised Statutes sec. 161.\*
  - C. Administrative Procedure Act sec. 3, P.L. 404, ch. 324, 79th Cong., 2d Sess.\*

\*Texts set out in full hereafter.

## TEXT OF THE FREEDOM OF INFORMATION ACT

(Section 552 of Title 5, United States Code, as amended by Public Law 90-23)

§ 552. Public information; agency rules, opinions, orders, records, and proceedings.

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public—

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying—

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and

(C) administrative staff manuals and instructions to staff that affect a member of the public;

unless the materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. However, in each case the justification for the deletion shall be explained fully in writing. Each agency also shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if—

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, on request for identifiable records made in accordance with published rules stating the time, place, fees to the extent authorized by statute, and procedure to be followed, shall make the records promptly available to any person. On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place

of business, or in which the agency records are situated, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complaint. In such a case the court shall determine the matter de novo and the burden is on the agency to sustain its action. In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member. Except as to causes the court considers of greater importance, proceedings before the district court, as authorized by this paragraph, take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.

(4) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(b) This section does not apply to matters that are—

(1) specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress. (Pub. L. 89-554; Sept. 6, 1966, 30 Stat. 383; Pub. L. 90-23, § 1, June 5, 1967, 81 Stat. 54.)

H. Rept. No. 125, 90th Cong., 1st Sess. (March 14, 1967)\*

CODIFICATION OF PUBLIC LAW 89-487

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MARCH 14, 1967.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. WILLIS, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 5357]

The Committee on the Judiciary, to whom was referred the bill (H.R. 5357) to amend section 552 of title 5, United States Code, to codify the provisions of Public Law 89-487, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of this bill is to incorporate into title 5 of the United States Code, without substantive change, the provisions of Public Law 89-487, which was enacted subsequent to the passage of title 5 by the House of Representatives.

Title 5, enacted by Public Law 89-554, contained the Administrative Procedure Act as amended through June 30, 1965. The amendment to that act by Public Law 89-487 becomes effective July 4, 1967, but was not drafted as an amendment to title 5.

SECTION ANALYSIS

SECTION 1

Section 1 amends section 552 of title 5, United States Code, to reflect Public Law 89-487.

The words "Every agency shall make available to the public the following information" are omitted as redundant as to subsections (a)-(d) in view of the provisions contained therein, and as inapplicable to subsections (e) and (f).

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\*The Senate Report (No. 248, May 17, 1967) is almost identical to this House Report.



In subsections (a)(1) and (c), the word "employees" is substituted for "officers" to conform with the definition of "employee" in 5 U.S.C. 2105.

In the last sentence of subsection (b), the words "A final order \* \* \* may be relied on \* \* \* only if" are substituted for "No final order \* \* \* may be relied upon \* \* \* unless"; and the words "a party other than an agency" and "the party" are substituted for "a private party" and "the private party", respectively, on authority of the definition of "private party" in 5 App. U.S.C. 1002(g).

In subsection (d), the words "shall maintain and make available for public inspection a record" are substituted for "shall keep a record \* \* \* and that record shall be available for public inspection".

In subsection (e)(5) and (7), the words "a party other than an agency" are substituted for "a private party" on authority of the definition of "private party" in 5 App. U.S.C. 1002(g).

In subsection (f), the words "This section does not authorize" and "This section is not authority" are substituted for "Nothing in this section authorizes" and "nor shall this section be authority", respectively.

5 App. U.S.C. 1002(g), defining "private party" to mean a party other than a agency, is omitted since the words, "party other than an agency" are substituted for the words "private party" wherever they appear in revised 5 U.S.C. 552.

5 App. U.S.C. 1002(h), prescribing the effective date, is omitted as unnecessary. That effective date is prescribed by section 4 of this bill.

#### SECTION 2

Section 2 amends the analysis of chapter 5 of title 5, United States Code, to reflect the change in the catchline for section 552 of title 5.

#### SECTION 3

Section 3 repeals the act of July 4, 1966, Public Law 89-487 (80 Stat. 250)

#### SECTION 4

Section 4 prescribes the effective date of the bill as July 4, 1967, or the date of enactment of the bill, whichever is later. This conforms with the effective date of Public Law 89-487 which is repealed by this bill.

COMPLIANCE WITH RAMSEYER RULE

In compliance with paragraph 3 of rule XIII of the Rules of the House of Representatives, changes in existing law are shown below:

EXISTING LAW

(Sec. 3 of Administrative Procedure Act, as amended by Public Law 89-487)

SEC. 3. Every agency shall make available to the public the following information:

(a) PUBLICATION IN THE FEDERAL REGISTER.—Every agency shall separately state and currently publish in the Federal Register for the guidance of the public (A) descriptions of its central and field organization and the established places at which, the officers from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions; (B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available; (C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations; (D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and (E) every amendment, revision, or repeal of the foregoing. Except to the extent that a person has actual and timely notice of the terms thereof, no person

NEW TEXT

(Sec. 552 of title 5, United States Code)

**§ 552. Public information; agency rules, opinions, orders, records, and proceedings**

(a) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public—

(1) descriptions of its central and field organization and the established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(2) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(3) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

**EXISTING LAW**

shall in any manner be required to resort to, or be adversely affected by any matter required to be published in the Federal Register and not so published. For purposes of this subsection, matter which is reasonably available to the class of persons affected thereby shall be deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(b) AGENCY OPINIONS AND ORDERS.—Every agency shall, in accordance with published rules, make available for public inspection and copying (A) all final opinions (including concurring and dissenting opinions) and all orders made in the adjudication of cases, (B) those state-

**NEW TEXT**

(4) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(5) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this subsection, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(b) Each agency, in accordance with published rules, shall make available for public inspection and copying—

(1) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

ments of policy and interpretations which have been adopted by the agency and are not published in the Federal Register, and (C) administrative staff manuals and instructions to staff that affect any member of the public, unless such materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction: *Provided*, That in every case the justification for the deletion must be fully explained in writing. Every agency also shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter which is issued, adopted, or promulgated after the effective date of this Act and which is required by this subsection to be made available or published. No final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects any member of the public may be relied upon, used or cited as precedent by an agency against any private party unless it has been indexed and either made available or published as provided by this subsection or unless that private party shall have actual and timely notice of the terms thereof.

- (2) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and
- (3) administrative staff manuals and instructions to staff that affect a member of the public;

unless the materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. However, in each case the justification for the deletion shall be explained fully in

EXISTING LAW

(c) AGENCY RECORDS.—Except with respect to the records made available pursuant to subsections (a) and (b), every agency shall, upon request for identifiable records made in accordance with published rules stating the time, place, fees to the extent authorized by statute and procedure to be followed, make such records promptly available to any person. Upon complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated shall have jurisdiction to enjoin the agency from the withholding of agency records and to order the production of any agency records improperly withheld from the complainant. In such cases the court shall determine the matter de novo and the burden shall be upon the agency to sustain its action. In the event of noncompliance with the court's order, the

NEW TEXT

writing. Each agency also shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this subsection to be made available or published. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if—

(A) it has been indexed and either made available or published as provided by this subsection; or

(B) the party has actual and timely notice of the terms thereof.

(c) Except with respect to the records made available under subsections (a) and (b) of this section, each agency, on request for identifiable records made in accordance with published rules stating the time, place, fees to the extent authorized by statute, and procedure to be followed, shall make the records promptly available to any person. On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo and the burden is on the agency to sustain its action. In the event of noncompliance with the order of the court, the district court may punish the responsible employees for

district court may punish the responsible officers for contempt. Except as to those causes which the court deems of greater importance, proceedings before the district court as authorized by this subsection shall take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.

(d) **AGENCY PROCEEDINGS.**—Every agency having more than one member shall keep a record of the final votes of each member in every agency proceeding and such record shall be available for public inspection.

(e) **EXEMPTIONS.**—The provisions of this section shall not be applicable to matters that are (1) specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy; (2) related solely to the internal personnel rules and practices of any agency; (3) specifically exempted from disclosure by statute; (4) trade secrets and commercial or financial information obtained from any person and privileged or confidential; (5) inter-agency or intra-agency memorandums or letters which would not be available by law to a private party in litigation with the agency; (6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; (7) investigatory files compiled for law enforcement purposes except to the extent available by law to a private party; (8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions; and (9) geological and geophysi-

contempt. Except as to causes the court considers of greater importance, proceedings before the district court, as authorized by this subsection, take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.

(d) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(e) This section does not apply to matters that are—

(1) specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

EXISTING LAW

cal information and data (including maps) concerning wells.

(f) LIMITATION OF EXEMPTIONS.—Nothing in this section authorizes withholding of information or limiting the availability of records to the public except as specifically stated in this section, nor shall this section be authority to withhold information from Congress.

(g) PRIVATE PARTY.—As used in this section, “private party” means any party other than an agency.

(h) EFFECTIVE DATE.—This amendment shall become effective one year following the date of the enactment of this Act.

NEW TEXT

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

(f) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

H.R. 5357 Considered and Passed House April 3, 1967, 113 Cong. Rec. 8109

CODIFICATION OF PUBLIC LAW 89-487

The Clerk called the bill (H.R. 5357) to amend section 552 of title 5, United States Code, to codify the provisions of Public Law 89-487.

The SPEAKER. Is there objection to the present consideration of the bill?  
 Mr. HALL. Mr. Speaker, reserving the right to object, it is my understanding, although it is not so stated in the report, that these changes were recommended by the Department of Justice. Will the gentleman from the Committee on the Judiciary confirm this?

Mr. KASTENMEIER. Mr. Speaker, will the gentleman from Missouri yield?

Mr. HALL. I yield to the gentleman from Wisconsin.

Mr. KASTENMEIER. Mr. Speaker, These are not actual changes, but this procedure, incorporating this entire title 5, was recommended by the Department of Justice.

Mr. HALL. Mr. Speaker, I would like to inquire further as to whether this would in any way aid or abet what has come about as a result of the Reorganization Act of 1949, which makes it possible to print in the Federal Register a reorganization of one of the executive branches, with the full effect and weight of law if not objected to by resolution on the part of one of the two Houses of Congress within a requisite number of days—Is there anything within these changes of the provisions of Public Law 89-487 which would make this power of the “veto in reverse”—as I have referred to in the provision—more applicable?

In other words, what I am getting at is, will it further relegate any of the powers of the Congress to the executive branch of the Government?

Mr. KASTENMEIER. Mr. Speaker, will the gentleman from Missouri yield?

Mr. HALL. I yield to the gentleman from Wisconsin.

Mr. KASTENMEIER. Mr. Speaker, I assure the gentleman this does not have that effect. This does not change in any respect the powers of Congress or the executive branch.

Mr. HALL. We do have the gentleman's full assurance that on this bill there is no substantive change, and that it is really a technical and conforming amendment which has nothing to do with the “veto in reverse”?

Mr. KASTENMEIER. Mr. Speaker, if the gentleman from Missouri will yield further, the bill simply incorporates into title 5, without any substantive change, an amendment of the Administrative Procedures Act. This bill incorporates into title 5 of the United States Code, without substantive change, the provisions of Public Law 89-487. That law was not amended by title 5, which was enacted by Public Law 89-554, but which codified the Administrative Procedures Act.

For this reason we have so recommended.

Mr. HALL. I appreciate the gentleman's explanation.

Mr. GROSS. Mr. Speaker, will the gentleman yield?

Mr. HALL. I yield to the gentleman from Iowa.

Mr. GROSS. This would confer no greater power upon the 10th Judicial Conference or upon any other judicial conference in the country; is that correct?

Mr. KASTENMEIER. If the gentleman will yield further, I assure the gentleman it will not.

Mr. HALL. Mr. Speaker, I withdraw my reservation.

The SPEAKER. Is there objection to the present consideration of the bill? There being no objection, the Clerk read the bill, as follows:

[text omitted]

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.



H. Rept. No. 1497, 89th Cong., 2d Sess.

89TH CONGRESS <i>2d Session</i>	}	HOUSE OF REPRESENTATIVES	{	REPORT No. 1497
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## CLARIFYING AND PROTECTING THE RIGHT OF THE PUBLIC TO INFORMATION

MAY 9, 1966.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

Mr. DAWSON, from the Committee on Government Operations,  
submitted the following

### REPORT

[To accompany S. 1160]

The Committee on Government Operations, to whom was referred the bill (S. 1160) to amend section 3 of the Administrative Procedure Act, chapter 324, of the act of June 11, 1946 (60 Stat. 238), to clarify and protect the right of the public to information, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

#### I. PURPOSE

Section 3 of the Administrative Procedure Act (5 U.S.C. 1002) requires every executive agency to publish or make available to the public its methods of operation, public procedures, rules, policies, and precedents, and to make available other "matters of official record" to any person who is properly and directly concerned therewith. These requirements are subject to several broad exceptions discussed below. The present section 3 is not a general public records law in that it does not afford to the public at large access to official records generally.

S. 1160 would revise the section to provide a true Federal public records statute by requiring the availability, to any member of the public, of all of the executive branch records described in its requirements, except those involving matters which are within nine stated exemptions. It makes the following major changes:

1. It eliminates the "properly and directly concerned" test of who shall have access to public records, stating that the great majority of records shall be available to "any person." So that there would be no undue burden on the operations of Government agencies, reason-

able access regulations may be established and fees for record searches charged as is required by present law.<sup>1</sup>

2. It sets up workable standards for the categories of records which may be exempt from public disclosure, replacing the vague phrases "good cause found," "in the public interest," and "internal management" with specific definitions of information which may be withheld. Some of the specific categories cover information necessary to protect the national security; others cover material such as the Federal Bureau of Investigation files which are not now protected by law.<sup>2</sup>

3. It gives an aggrieved citizen a remedy by permitting an appeal to a U.S. district court. The court review procedure would be expected to persuade against the initial improper withholding and would not add substantially to crowded court dockets.<sup>3</sup>

## II. BACKGROUND

The broad outlines for legislative action to guarantee public access to Government information were laid out by Dr. Harold L. Cross in 1953. In that year he published, for the American Society of Newspaper Editors, the first comprehensive study of growing restrictions on the people's right to know the facts of government. Newspapermen, legislators, and other Government officials were concerned about the mushrooming growth of Government secrecy, but as James S. Pope, who was chairman of the Freedom of Information Committee of ASNE, explained in the foreword of the Cross book, "The People's Right To Know":

\* \* \* we had only the foggiest idea of whence sprang the blossoming Washington legend that agency and department heads enjoyed a sort of personal ownership of news about their units. We knew it was all wrong, but we didn't know how to start the battle for reformation.

Basic to the work of Dr. Cross was the—

conviction that inherent in the right to speak and the right to print was the right to know. The right to speak and the right to print, without the right to know, are pretty empty  
\* \* \*

Dr. Cross outlined three areas where, through legislative inaction, the weed of improper secrecy had been permitted to blossom and was choking out the basic right to know: the "housekeeping" statute which gives Government officials general authority to operate their agencies, the "executive privilege" concept which affects legislative access to executive branch information, and section 3 of the Administrative Procedure Act which affects public access to the rules and regulations of Government action.

In 1958 Congress corrected abuse of the Government's 180-year-old "housekeeping" statute by enacting a bill introduced in the House by Congressman John E. Moss and in the Senate by Senator Thomas E. Hennings. The Moss-Hennings bill stated that provisions of the

<sup>1</sup> Hearings, pp. 61 and 67; see also 5 U.S.C. 140.

<sup>2</sup> Hearings, pp. 15, 20, 27, and 39.

<sup>3</sup> Hearings, pp. 107 and 108.

<sup>4</sup> Hearings, Foreign Operations and Government Information Subcommittee, on a proposed Federal public records law, Mar. 30, 31, Apr. 1, 2, and 5, 1965, p. 26, cited hereafter as "hearings."

"housekeeping" statute (5 U.S.C. 22) which permitted department heads to regulate the storage and use of Government records did not permit them to withhold those records from the public.

The concept that Government officials far down the administrative line from the President could use a claim of "executive privilege" to withhold information from the Congress was narrowed in 1962 when President Kennedy informed Congress that he, and he alone, would invoke it. This limitation on the use of the "executive privilege" claim to withhold information from Congress was affirmed by President Johnson in a letter to Congressman Moss on April 2, 1965.<sup>5</sup>

While there have been substantial improvements in two of the areas of excessive Government secrecy, nothing has been done to correct abuses in the third area. In fact, section 3 of the Administrative Procedure Act has become the major statutory excuse for withholding Government records from public view.

#### THE "PUBLIC INFORMATION" SECTION OF THE ADMINISTRATIVE PROCEDURE ACT

The Administrative Procedure Act, which was adopted in 1946 to bring some order out of the growing chaos of Government regulation, set uniform standards for the thousands of Government administrative actions affecting the public; it restated the law of judicial review permitting the public to appeal to the courts about wrongful administrative actions; it provided for public participation in an agency's rulemaking activities. But most important it required "agencies to keep the public currently informed of their organization, procedures, and rules."<sup>6</sup> The intent of the public information section of the Administrative Procedure Act (sec. 3) was set forth clearly by the Judiciary Committee, in reporting the measure to the Senate. The report declares that the public information provisions—

are in many ways among the most important, far-reaching, and useful provisions \* \* \*. The section has been drawn upon the theory that administrative operations and procedures are public property which the general public, rather than a few specialists or lobbyists, is entitled to know or have ready means of knowing with definiteness and assurance.<sup>7</sup>

The act was signed in June 1946, and on July 15, 1946, the Department of Justice distributed to all agencies a 12-page memorandum interpreting section 3, which was to become effective on September 11, 1946. The memorandum, which together with similar memorandums interpreting the other sections of the act was later made available in the Attorney General's Manual, noted that Congress had left up to each agency the decision on what information about the agency's actions was to be classed as "official records."<sup>8</sup>

The Administrative Procedure Act had been in operation less than 10 years when a Hoover Commission task force recommended minor changes in the public information section. S. 2504 (Wiley) and S. 2541 (McCarthy) were introduced in the 84th Congress to carry out the minimal task force recommendations, but the bills died without even a hearing. In the 85th Congress, the first major revision of the public

<sup>5</sup> Hearings, p. 123.

<sup>6</sup> Attorney General's Manual on the Administrative Procedure Act, prepared by the Department of Justice, 1947, p. 9; cited hereafter as "Attorney General's Manual."

<sup>7</sup> H. Rept. 752, 79th Cong., 1st sess., p. 193.

<sup>8</sup> Attorney General's Manual, p. 24.

information provisions was introduced simultaneously in the House by Congressman Moss (H.R. 7174) and in the Senate by Senator Hennings (S. 2148). The legislation was based on a detailed study by Jacob Scher, Northwestern University expert on press law, who was serving as special counsel to the House Government Information Subcommittee. There was no action in either the House or Senate on the Moss and Hennings bills, and modified versions were introduced year after year with no final action. In the 88th Congress the Senate passed S. 1666 too late in the session for House action. In the 89th Congress the Senate passed S. 1160 sponsored by 22 Members of the Senate, and the Foreign Operations and Government Information Subcommittee held extensive hearings on similar legislation—H.R. 5012 and 23 comparable House bills.

### III. THE NEED FOR LEGISLATION

Section 3 of the Administrative Procedure Act (5 U.S.C. 1002), though titled "Public Information" and clearly intended for that purpose, has been used as an authority for withholding, rather than disclosing, information. Such a 180° turn was easy to accomplish given the broad language of 5 U.S.C. 1002. The law, in its entirety, states:

#### PUBLIC INFORMATION

**SEC. 3.** Except to the extent that there is involved (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating solely to the internal management of an agency—

(a) **RULES.**—Every agency shall separately state and currently publish in the Federal Register (1) descriptions of its central and field organization including delegations by the agency of final authority and the established places at which, and methods whereby, the public may secure information or make submittals or requests; (2) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal or informal procedures available as well as forms and instructions as to the scope and contents of all papers, reports, or examinations; and (3) substantive rules adopted as authorized by law and statements of general policy or interpretations formulated and adopted by the agency for the guidance of the public, but not rules addressed to and served upon named persons in accordance with law. No person shall in any manner be required to resort to organization or procedure not so published.

(b) **OPINIONS AND ORDERS.**—Every agency shall publish or, in accordance with published rule, make available to public inspection all final opinions or orders in the adjudication of cases (except those required for good cause to be held confidential and not cited as precedents) and all rules.

(c) **PUBLIC RECORDS.**—Save as otherwise required by statute, matters of official record shall in accordance with published rule be made available to persons properly and directly concerned except information held confidential for good cause found.

In a sense, "public information" is a misnomer for 5 U.S.C. 1002, since the section permits withholding of Federal agency records if secrecy is required "in the public interest" or if the records relate "solely to the internal management of an agency." Government information also may be held confidential "for good cause found." Even if no good cause can be found for secrecy, the records will be made available only to "persons properly and directly concerned." Neither in the Administrative Procedure Act nor its legislative history are these broad phrases defined, nor is there a recognition of the basic right of any person—not just those special classes "properly and directly concerned"—to gain access to the records of official Government actions. Above all, there is no remedy available to a citizen who has been wrongfully denied access to the Government's public records. The present statute, therefore, is not in any realistic sense a public information statute.

#### ABUSE OF THE "PUBLIC INFORMATION" SECTION

Improper denials occur again and again. For more than 10 years, through the administrations of both political parties, case after case of improper withholding based upon 5 U.S.C. 1002 has been documented. The Administrative Procedure Act provides no adequate remedy to members of the public to force disclosures in such cases.

Earlier this year the Foreign Operations and Government Information Subcommittee uncovered a serious violation of subsection (a) of 5 U.S.C. 1002 which requires every Government agency to publish its rules and a description of its organization and method of operation. In spite of repeated demands, this clear legal requirement has been ignored by the Board of Review on Loss of Nationality in the Department of State, which has authority over questions of citizenship.

In 1962 the National Science Foundation decided it would not be "in the public interest" to disclose cost estimates submitted by unsuccessful contractors in connection with a multimillion-dollar deep sea study. It appeared that the firm which had won the lucrative contract had not submitted the lowest bid. It took White House intervention to reverse the agency's decision that it had authority for this secrecy "in the public interest."<sup>9</sup>

Matters which relate solely to "internal management" and thus can be withheld under the provisions of 5 U.S.C. 1002 range from the important to the insignificant. They range from a proposed spending program, still being worked out in the agency for future presentation to the Congress, to a routine telephone book. In 1961, for example, the Secretary of the Navy ruled that "telephone directories fall in the category of information relating to the internal management of the Navy," and he cited 5 U.S.C. 1002 as his authority for this ruling.<sup>10</sup> On the other hand, in some instances the premature disclosure of agency plans that are undergoing development and are likely to be revised before they are presented, particularly plans relating to expenditures, could have adverse effects upon both public and private interests. Indeed, there may be plans which, even though finalized, cannot be made freely available in advance of the effective date without damage to such interests. There may be legitimate reasons for

<sup>9</sup> H. Rept. 918, 88th Cong., pp. 89-99.

<sup>10</sup> H. Rept. 1257, 87th Cong., pp. 77-82.

nondisclosure, and S. 1160 is designed to permit nondisclosure in such cases.

The statutory requirement that information about routine administrative actions need be given only to "persons properly and directly concerned" has been relied upon almost daily to withhold Government information from the public. A most striking example is the almost automatic refusal to disclose the names and salaries of Federal employees. Shortly after World War II the western office of a Federal regulatory agency refused to make available the names and salaries of its administrative and supervisory employees. In 1959 the Postmaster General ruled that the public was not "properly and directly concerned" in knowing the names and salaries of postal employees. This ruling has been reiterated by every Postmaster General in every administration since and was only overturned recently by a Civil Service Commission ruling that "the names, position titles, grades, salaries, and duty stations of Federal employees are public information."<sup>11</sup>

If none of the other restrictive phrases of 5 U.S.C. 1002 applies to the official Government record which an agency wishes to keep confidential, it can be hidden behind the "good cause found" shield. Historically, Government agencies whose mistakes cannot bear public scrutiny have found "good cause" for secrecy. A recurring example is the refusal by regulatory boards and commissions which are composed of more than one member to make public their votes on issues or to publicize the views of dissenting members. According to the latest subcommittee survey, six regulatory agencies do not publicize dissenting views. And the Board of Engineers for Rivers and Harbors, which rules on billions of dollars' worth of Federal construction projects, used the "good cause found" authority to close its meetings to the press and to refuse to divulge the votes of its members on controversial issues.<sup>12</sup>

Thus, even though 5 U.S.C. 1002 is titled a "public information" section, the requirements for publicity are so hedged with restrictions that it has been cited as the basic statutory authority for 24 separate terms—in addition to "Top Secret," "Secret," and "Confidential" used by Executive order only on national defense matters—which Federal agencies have devised to stamp on administrative information they want to keep from public view. The 24 restrictive phrases range from the often-used "Official Use Only" through the simple "Non-public" and more complicated "Individual Company Data" to the long and confusing "Limitation on Availability of Equipment Files for Public Reference."

It is vital to our way of life to reach a workable balance between the right of the public to know and the need of the Government to keep information in confidence to the extent necessary without permitting indiscriminate secrecy. The right of the individual to be able to find out how his Government is operating can be just as important to him as his right to privacy and his right to confide in his Government. This bill strikes a balance considering all these interests.

<sup>11</sup> H. Rept. 2084, 86th Cong., pp. 128-133; H. Rept. 818, 87th Cong., pp. 106-108; Congressional Record, Mar. 21, 1960, pp. A1598-1599.

<sup>12</sup> H. Rept. 2578, 85th Cong., pp. 42-53; H. Rept. 1137, 86th Cong., pp. 71-74.

## IV. DETAILED DESCRIPTION

*Subsection (a).*—A number of the minor changes which subsection (a) of S. 1160 would make in the present law clarify the fact that the Federal Register is a publication in which the public can find the details of the administrative operations of Federal agencies. They would be able to find out where and by whom decisions are made in each Federal agency and how to make submittals or requests. These administrative details are required to be published in the Federal Register by the present law, but it is unclear exactly what type of material must be published.

Subsection (a) also includes a provision to help reduce the bulk of the Federal Register by making it unnecessary to publish material "which is reasonably available" if that material has been incorporated in the Federal Register by reference. Presumably, the reference would indicate where and how the material may be obtained. Permission to incorporate material in the Federal Register by reference would have to be granted by the Director of the Federal Register, instead of permitting each agency head to decide what should be published.

An added incentive for agencies to publish the necessary details about their official activities in the Federal Register is the provision that no person shall be "adversely affected" by material required to be published—or incorporated by reference—in the Federal Register but not so published. This tightens the present law which states that no person shall be required to resort to "organization and procedure" not published in the Federal Register.

*Subsection (b).*—The present subsection (b) permits an agency's orders and opinions to be withheld from the public if the material is "required for good cause found to be held confidential." Subsection (b) of S. 1160 deletes this general, undefined authority for secrecy. Instead, the bill lists in a later subsection the specific categories of information which may be exempted from disclosure.

In addition to the orders and opinions required to be made public by the present law, subsection (b) of S. 1160 would require agencies to make available statements of policy, interpretations, staff manuals, and instructions that affect any member of the public. This material is the end product of Federal administration. It has the force and effect of law in most cases, yet under the present statute these Federal agency decisions have been kept secret from the members of the public affected by the decisions.

As the Federal Government has extended its activities to solve the Nation's expanding problems—and particularly in the 20 years since the Administrative Procedure Act was established—the bureaucracy has developed its own form of case law. This law is embodied in thousands of orders, opinions, statements, and instructions issued by hundreds of agencies. This is the material which would be made available under subsection (b) of S. 1160. However, under S. 1160 an agency may not be required to make available for public inspection and copying any advisory interpretation on a specific set of facts which is requested by and addressed to a particular person, provided that such interpretation is not cited or relied upon by any officer or employee of the agency as a precedent in the disposition of other cases. Furthermore, an agency may not be required to make available those portions of its staff manuals and instructions which set forth criteria or guidelines for the staff in auditing or inspection procedures, or in

the selection or handling of cases, such as operational tactics, allowable tolerances, or criteria for defense, prosecution, or settlement of cases.

Subsection (b) solves the conflict between the requirement for public access to records of agency actions and the need to protect individual privacy. It permits an agency to delete personal identifications from its public records "to prevent a clearly unwarranted invasion of personal privacy." The public has a need to know, for example, the details of an agency opinion or statement of policy on an income tax matter, but there is no need to identify the individuals involved in a tax matter if the identification has no bearing or effect on the general public. Subsection (b) of S. 1160 would prevent the privacy deletion from being used as a general excuse for secrecy by requiring that the justification for each deletion be explained in writing.

Subsection (b) would help bring order out of the confusion of agency orders, opinions, policy statements, interpretations, manuals, and instructions by requiring each agency to maintain for public inspection an index of all the documents having precedential significance which would be made available or published under the law. The indexing requirement will prevent a citizen from losing a controversy with an agency because of some obscure or hidden order or opinion which the agency knows about but which has been unavailable to the citizen simply because he had no way to discover it. However, considerations of time and expense caused this indexing requirement to be made prospective in application only.

Many agencies—including the Interstate Commerce Commission which is the oldest Federal regulatory agency—already have adequate indexing programs in operation. As an incentive to establish an effective indexing system, subsection (b) of S. 1160 includes a provision that no agency action may be relied upon, used, or cited as a precedent against a private party unless it is indexed or unless the private party has adequate notice of the terms of the agency order.

Subsection (b) requires that Federal agency records which are available for public inspection also must be available for copying, since the right to inspect records is of little value without the right to copy them for future reference. Presumably the copying process would be without expense to the Government since the law (5 U.S.C. 140) already directs Federal agencies to charge a fee for any direct or indirect services such as providing reports and documents.

Subsection (b) also requires concurring and dissenting opinions to be made available for public inspection. The present law, requiring most final opinions and orders to be made public, implies that dissents and concurrences need not be disclosed. As a result of a Government Information Subcommittee investigation a number of years ago, two major regulatory agencies agreed to make public the dissenting opinions of their members, but a recent survey indicated that five agencies—including the Federal Deposit Insurance Corporation and the Renegotiation Board—do not make public the minority views of their members.

*Subsection (c).*—In place of the negative approach of the present law (5 U.S.C. 1002) which permits only persons properly and directly concerned to have access to official records if the records are not held confidential for good cause found, subsection (c) of S. 1160 establishes the basic principle of a public records law by making the records available to any person.



The persons requesting records must provide a reasonable description enabling Government employees to locate the requested material, but the identification requirement must not be used as a method for withholding. Reasonable access rules can be adopted stating the time and place records shall be available—presumably during regular working hours in the location where the records are stored or used—and stating the records search or copying fees which may be charged pursuant to 5 U.S.C. 140.

Subsection (c) contains a specific remedy for any improper withholding of agency records by granting the U.S. district courts jurisdiction to order the production of agency records improperly withheld. If a request for information is denied by an agency subordinate the person making the request is entitled to prompt review by the head of the agency. An aggrieved person is given the right to file an action in the district where he resides or has his principal place of business, or where the agency records are situated.

The proceedings are to be de novo so that the court can consider the propriety of the withholding instead of being restricted to judicial sanctioning of agency discretion. The Court will have authority whenever it considers such action equitable and appropriate to enjoin the agency from withholding its records and to order the production of agency records improperly withheld. The burden of proof is placed upon the agency which is the only party able to justify the withholding. A private citizen cannot be asked to prove that an agency has withheld information improperly because he will not know the reasons for the agency action.

The court is authorized to expedite actions under subsection (c) "in every way," and the court review procedure would be expected to serve as an influence against the initial wrongful withholding instead of adding substantially to crowded court dockets.

*Subsection (d).*—The subsection requires that a record be kept of all final votes of multiheaded agencies in any regulatory or adjudicative proceeding and such record shall be open to public inspection. Practices of the many agencies vary in this regard. The subsection would require public access to the records of official votes unless the information is withheld pursuant to the exemptions spelled out in the following subsection.

*Subsection (e).*—All of the preceding subsections of S. 1160—requirements for publication of procedural matters and for disclosure of operating procedures, provisions for court review, and for public access to votes—are subject to the exemptions from disclosure specified in subsection (e). They are:

1. Matters specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy: The language both limits the present vague phrase, "in the public interest," and gives the area of necessary secrecy a more precise definition. The permission to withhold Government records "in the public interest" is undefinable. In fact, the Department of Justice left it up to each agency to determine what would be withheld under the blanket term "public interest."<sup>13</sup> No Government employee at any level believes that the "public interest" would be served by disclosure of his failures or wrongdoings, but citizens both in and out of Government can agree to restrictions on categories of information which the

<sup>13</sup> Attorney General's Manual, p. 18.

President has determined must be kept secret to protect the national defense or to advance foreign policy, such as matters classified pursuant to Executive Order 10501.

2. Matters related solely to the internal personnel rules and practices of any agency: Operating rules, guidelines, and manuals of procedure for Government investigators or examiners would be exempt from disclosure, but this exemption would not cover all "matters of internal management" such as employee relations and working conditions and routine administrative procedures which are withheld under the present law.<sup>14</sup>

3. Matters which are specifically exempted from disclosure by other statutes: There are nearly 100 statutes or parts of statutes which restrict public access to specific Government records. These would not be modified by the public records provisions of S. 1160.

4. Trade secrets and commercial or financial information obtained from any person and privileged or confidential: This exemption would assure the confidentiality of information obtained by the Government through questionnaires or through material submitted and disclosures made in procedures such as the mediation of labor-management controversies.<sup>15</sup> It exempts such material if it would not customarily be made public by the person from whom it was obtained by the Government. The exemption would include business sales statistics, inventories, customer lists, scientific or manufacturing processes or developments, and negotiation positions or requirements in the case of labor-management mediations. It would include information customarily subject to the doctor-patient, lawyer-client, or lender-borrower privileges such as technical or financial data submitted by an applicant to a Government lending or loan guarantee agency. It would also include information which is given to an agency in confidence, since a citizen must be able to confide in his Government. Moreover, where the Government has obligated itself in good faith not to disclose documents or information which it receives, it should be able to honor such obligations.

5. Inter-agency or intra-agency memorandums or letters which would not be available by law to a private party in litigation with the agency: Agency witnesses argued that a full and frank exchange of opinions would be impossible if all internal communications were made public. They contended, and with merit, that advice from staff assistants and the exchange of ideas among agency personnel would not be completely frank if they were forced to "operate in a fishbowl." Moreover, a Government agency cannot always operate effectively if it is required to disclose documents or information which it has received or generated before it completes the process of awarding a contract or issuing an order, decision or regulation. This clause is intended to exempt from disclosure this and other information and records wherever necessary without, at the same time, permitting indiscriminate administrative secrecy. S. 1160 exempts from disclosure material "which would not be available by law to a private party in litigation with the agency." Thus, any internal memorandums which would routinely be disclosed to a private party through the discovery process in litigation with the agency would be available to the general public.

<sup>14</sup> Hearings, pp. 29 and 30.

<sup>15</sup> Hearings, pp. 45 and 46.

6. Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy: Such agencies as the Veterans' Administration, Department of Health, Education, and Welfare, Selective Service, and Bureau of Prisons have great quantities of files containing intimate details about millions of citizens. Confidentiality of these records has been maintained by agency regulation but without statutory authority.<sup>16</sup> A general exemption for the category of information is much more practical than separate statutes protecting each type of personal record. The limitation of a "clearly unwarranted invasion of personal privacy" provides a proper balance between the protection of an individual's right of privacy and the preservation of the public's right to Government information by excluding those kinds of files the disclosure of which might harm the individual. The exemption is also intended to cover detailed Government records on an individual which can be identified as applying to that individual and not the facts concerning the award of a pension or benefit or the compilation of unidentified statistical information from personal records.

7. Investigatory files compiled for law enforcement purposes except to the extent available by law to a private party: This exemption covers investigatory files related to enforcement of all kinds of laws, labor and securities laws as well as criminal laws. This would include files prepared in connection with related Government litigation and adjudicative proceedings. S. 1160 is not intended to give a private party indirectly any earlier or greater access to investigatory files than he would have directly in such litigation or proceedings.

8. Matters contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions: This exemption is designed to insure the security and integrity of financial institutions, for the sensitive details collected by Government agencies which regulate these institutions could, if indiscriminately disclosed, cause great harm.

9. Geological and geophysical information and data (including maps) concerning wells: This category was added after witnesses testified that geological maps based on explorations by private oil companies were not covered by the "trade secrets" provisions of present laws. Details of oil and gas findings must be filed with Federal agencies by companies which want to lease Government-owned land. Current regulations of the Bureau of Land Management prohibit disclosure of these details only if the disclosure "would be prejudicial to the interests of the Government" (43 CFR, pt. 2). Witnesses contended that disclosure of the seismic reports and other exploratory findings of oil companies would give speculators an unfair advantage over the companies which spent millions of dollars in exploration.

*Subsection (f).*—The purpose of this subsection is to make clear beyond doubt that all the materials of Government are to be available to the public unless specifically exempt from disclosure by the provisions of subsection (e) or limitations spelled out in earlier subsections. And subsection (f) restates the fact that a law controlling public access to Government information has absolutely no effect upon congressional access to information. Members of the Congress

<sup>16</sup> Hearings, pp. 15, 20, 27, and 30.

have all of the rights of access guaranteed to "any person" by S. 1160, and the Congress has additional rights of access to all Government information which it deems necessary to carry out its functions.<sup>17</sup>

*Subsection (g).*—This subsection defines "private party" as any party other than an agency. The term is not defined elsewhere in the Administrative Procedure Act to be amended by S. 1160.

*Subsection (h).*—A delay of 1 year in the effective date of the Federal public records law is designed to give agencies ample time to conform their practices to the new law.

## V. CONCLUSION

A democratic society requires an informed, intelligent electorate, and the intelligence of the electorate varies as the quantity and quality of its information varies. A danger signal to our democratic society in the United States is the fact that such a political truism needs repeating. And repeated it is, in textbooks and classrooms, in newspapers and broadcasts.

The repetition is necessary because the ideals of our democratic society have outpaced the machinery which makes that society work. The needs of the electorate have outpaced the laws which guarantee public access to the facts in Government. In the time it takes for one generation to grow up and prepare to join the councils of Government—from 1946 to 1966—the law which was designed to provide public information about Government activities has become the Government's major shield of secrecy.

S. 1160 will correct this situation. It provides the necessary machinery to assure the availability of Government information necessary to an informed electorate.

## VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

### SECTION 3 OF THE ADMINISTRATIVE PROCEDURE ACT

(60 STAT. 238)

#### PUBLIC INFORMATION

SEC. 3. [Except to the extent that there is involved (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating solely to the internal management of an agency—] *Every agency shall make available to the public the following information:*

(a) [RULES] *PUBLICATION IN THE FEDERAL REGISTER.*—Every agency shall separately state and currently publish in the Federal Register for the guidance of the public [(1)] (A) descriptions of its central and field organization [including delegations by the Agency of final authority] and the established places at which, *the officers from whom, and the methods whereby, the public may secure information*

<sup>17</sup> Hearings, p. 23.

**[or]**, make submittals or requests, or obtain decisions; **[(2)]** (B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal **[or]** and informal procedures available **[as well as forms and instructions as to the scope and contents of all papers, reports, or examinations]**; (C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations; **[and (3)]** (D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency **[for the guidance of the public, but not rules addressed to and served upon named persons in accordance with law]**; and (E) every amendment, revision, or repeal of the foregoing. **[No]** Except to the extent that a person has actual and timely notice of the terms thereof, no person shall in any manner be required to resort to **[organization or procedure]**, or be adversely affected by any matter required to be published in the Federal Register and not so published. For purposes of this subsection, matter which is reasonably available to the class of persons affected thereby shall be deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(b) **AGENCY OPINIONS AND ORDERS.**—Every agency shall **[publish or]**, in accordance with published **[rule]** rules, make available **[to]** for public inspection and copying (A) all final opinions (including concurring and dissenting opinions) and all **[or]** orders made in the adjudication of cases **[(except those required for good cause to be held confidential and not cited as precedents) and all rules]**, (B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register, and (C) administrative staff manuals and instructions to staff that affect any member of the public, unless such materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction: Provided, That in every case the justification for the deletion must be fully explained in writing. Every agency also shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter which is issued, adopted, or promulgated after the effective date of this Act and which is required by this subsection to be made available or published. No final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects any member of the public may be relied upon, used or cited as precedent by an agency against any private party unless it has been indexed and either made available or published as provided by this subsection or unless that private party shall have actual and timely notice of the terms thereof.

(c) **[PUBLIC RECORDS.**—Save as otherwise required by statute, matters of official record shall in accordance with published rule be made available to persons properly and directly concerned except information held confidential for good cause found.] **AGENCY RECORDS.**—Except with respect to the records made available pursuant to subsections (a) and (b), every agency shall, upon request for identifiable records made in accordance with published rules stating the time, place, fees to the extent authorized by statute and procedure to be followed, make such records promptly available to any person. Upon complaint, the district court

of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated shall have jurisdiction to enjoin the agency from the withholding of agency records and to order the production of any agency records improperly withheld from the complainant. In such cases the court shall determine the matter *de novo* and the burden shall be upon the agency to sustain its action. In the event of noncompliance with the court's order, the district court may punish the responsible officers for contempt. Except as to those causes which the court deems of greater importance, proceedings before the district court as authorized by this subsection shall take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.

(d) *AGENCY PROCEEDINGS.*—Every agency having more than one member shall keep a record of the final votes of each member in every agency proceeding and such record shall be available for public inspection.

(e) *EXEMPTIONS.*—The provisions of this section shall not be applicable to matters that are (1) specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy; (2) related solely to the internal personnel rules and practices of any agency; (3) specifically exempted from disclosure by statute; (4) trade secrets and commercial or financial information obtained from any person and privileged or confidential; (5) inter-agency or intra-agency memorandums or letters which would not be available by law to a private party in litigation with the agency; (6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; (7) investigatory files compiled for law enforcement purposes except to the extent available by law to a private party; (8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions; and (9) geological and geophysical information and data (including maps) concerning wells.

(f) *LIMITATION OF EXEMPTIONS.*—Nothing in this section authorizes withholding of information or limiting the availability of records to the public except as specifically stated in this section, nor shall this section be authority to withhold information from Congress.

(g) *PRIVATE PARTY.*—As used in this section, "private party" means any party other than an agency.

(h) *EFFECTIVE DATE.*—This amendment shall become effective one year following the date of the enactment of this Act.

S. Rept. No. 813, 89th Cong., 1st Sess.

**Calendar No. 798**

89TH CONGRESS } 1st Session }	SENATE	{ }	REPORT No. 813
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**CLARIFYING AND PROTECTING THE RIGHT OF THE PUBLIC TO INFORMATION, AND FOR OTHER PURPOSES**


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OCTOBER 4 (legislative day, OCTOBER 1), 1965.—Ordered to be printed

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Mr. LONG of Missouri, from the Committee on the  
Judiciary, submitted the following

**REPORT**

[To accompany S. 1160]

The Committee on the Judiciary, to which was referred the bill (S. 1160) to clarify and protect the right of the public to information, and for other purposes, having considered the same, reports favorably thereon, with amendments and recommends that the bill as amended do pass.

**AMENDMENTS**

Amendment No. 1: On page 3, line 8, before "staff manuals" insert "administrative."

Amendment No. 2: On page 4, line 4, strike "Every" and insert in lieu thereof "Except with respect to the records made available pursuant to subsections (a) and (b), every."

Amendment No. 3: On page 4, line 4, after the comma insert "upon request for identifiable records made."

Amendment No. 4: On page 4, line 5, before "and" insert "fees to the extent authorized by statute."

Amendment No. 5: On page 4, line 6, strike "all its" and insert in lieu thereof "such."

Amendment No. 6: On page 4, lines 11 and 12, strike "and information"; and on line 13, strike "or information."

Amendment No. 7: On page 5, line 10, strike "the public" and insert in lieu thereof "any person."

Amendment No. 8: On page 5, lines 11 and 12, strike "dealing solely with matters of law or policy" and insert in lieu thereof "which would not be available by law to a private party in litigation with the agency."

Amendment No. 9: On page 5, line 17, strike the word "and"; and on page 5, line 20, strike the period and insert in lieu thereof "; and (9) geological and geophysical information and data (including maps) concerning wells."

#### PURPOSE OF AMENDMENTS

Amendment No. 1: The limitation of the staff manuals and instructions affecting the public which must be made available to the public to those which pertain to administrative matters rather than to law enforcement matters protects the traditional confidential nature of instructions to Government personnel prosecuting violations of law in court, while permitting a public examination of the basis for administrative action.

Amendment No. 2: This is a technical amendment to emphasize that the agency records made available by subsections (a) and (b) are not covered by subsection (c) which deals with other agency records.

Amendment No. 3: The purpose of this amendment is to require that requests of inspection of agency records identify the particular records requested. It is contemplated by the committee that the standards of identification applicable to the discovery of records in court proceedings would be appropriate guidelines with respect to the identification of agency records, especially as the courts would have jurisdiction to determine any allegations of improper withholding.

Amendment No. 4: It is contemplated that, where authorized by statute, an agency will require reasonable fees to be paid in appropriate cases.

Amendment No. 5: This is a technical amendment to require that the only records which must be made available are those for which a request has been made.

Amendment No. 6: This is a technical amendment to delete the term "information" which is included within the term "agency records" to the extent that it is in the form of a record.

Amendment No. 7: It was pointed out in statements to the committee that agencies may obtain information of a highly personal and individual nature. To better convey this idea the substitute language is provided.

Amendment No. 8: The purpose of clause (5) is to protect from disclosure only those agency memorandums and letters which would not be subject to discovery by a private party in litigation with the agency. This would include the working papers of the agency attorney and documents which would come within the attorney-client privilege if applied to private parties.

Amendment No. 9: The purpose of clause (9) is to protect from disclosure certain information which is highly valuable to several important industries and which should be kept confidential when it is contained in Government records.

#### PURPOSE OF BILL

In introducing S. 1666, the predecessor of the present bill, Senator Long quoted the words of Madison, who was chairman of the committee which drafted the first amendment to the Constitution:

Knowledge will forever govern ignorance, and a people who mean to be their own governors, must arm themselves



with the power knowledge gives. A popular government without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy or perhaps both.

Today the very vastness of our Government and its myriad of agencies makes it difficult for the electorate to obtain that "popular information" of which Madison spoke. But it is only when one further considers the hundreds of departments, branches, and agencies which are not directly responsible to the people, that one begins to understand the great importance of having an information policy of full disclosure.

Although the theory of an informed electorate is vital to the proper operation of a democracy, there is nowhere in our present law a statute which affirmatively provides for that information. Many witnesses have testified that the present public information section of the Administrative Procedure Act has been used more as an excuse for withholding than as a disclosure statute.

Section 3 of the Administrative Procedure Act, that section which this bill would amend, is full of loopholes which allow agencies to deny legitimate information to the public. Innumerable times it appears that information is withheld only to cover up embarrassing mistakes or irregularities and the withholding justified by such phrases in section 3 of the Administrative Procedure Act as—"requiring secrecy in the public interest," or "required for good cause to be held confidential."

It is the purpose of the present bill to eliminate such phrases, to establish a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language and to provide a court procedure by which citizens and the press may obtain information wrongfully withheld. It is important and necessary that the present void be filled. It is essential that agency personnel, and the courts as well, be given definitive guidelines in setting information policies. Standards such as "for good cause" are certainly not sufficient.

At the same time that a broad philosophy of "freedom" of information is enacted into law, it is necessary to protect certain equally important rights of privacy with respect to certain information in Government files, such as medical and personnel records. It is also necessary for the very operation of our Government to allow it to keep confidential certain material, such as the investigatory files of the Federal Bureau of Investigation.

It is not an easy task to balance the opposing interests, but it is not an impossible one either. It is not necessary to conclude that to protect one of the interests, the other must, of necessity, either be abrogated or substantially subordinated. Success lies in providing a workable formula which encompasses, balances, and protects all interests, yet places emphasis on the fullest responsible disclosure.

#### HISTORY OF LEGISLATION

After it became apparent that section 3 of the Administrative Procedure Act was being used as an excuse for secrecy, proposals for change began.

The first of these proposals, S. 2504, 84th Congress, introduced by Senator Wiley and S. 2541, 84th Congress, by Senator McCarthy, arose out of recommendations by the Hoover Commission Task

Force. These were quickly followed in the 85th Congress by the Henning's bill, S. 2148, and by S. 4094, introduced by Senators Ervin and Butler, which was incorporated as a part of the proposed Code of Federal Administrative Procedure.

S. 4094 was reintroduced by Senator Hennings in the 86th Congress as S. 186. This was followed in the second session by a slightly revised version of the same bill, numbered S. 2780. Senators Ervin and Butler reintroduced S. 4094 which was designated S. 1070, 86th Congress.

More recently, Senator Carroll introduced S. 1567, cosponsored by Senators Hart, Long, and Proxmire. Also introduced in the 87th Congress were the Ervin bill, S. 1887, its companion bill in the House, H.R. 9926, S. 1907 by Senator Proxmire, and S. 3410 introduced by Senators Dirksen and Carroll.

Although hearings were held on the Hennings bills, and considerable interest was aroused by all of the bills, no legislation resulted.

In the last Congress, the Senate passed S. 1666, upon which this bill is based, on July 31, 1964, but sufficient time did not remain in that Congress for its full consideration by the House. The present bill is substantially S. 1666, as passed by the Senate, with amendments reflecting suggestions made to the committee in the course of the hearings.

#### INADEQUACY OF PRESENT LAW

The present section 3 of the Administrative Procedure Act, which would be replaced by S. 1160, is so brief that it can be profitably placed at this point in the report:

#### PUBLIC INFORMATION

*Section 3:* Except to the extent that there is involved (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating solely to the internal management of an agency—

(a) *Rules.*—Every agency shall separately state and currently publish in the Federal Register (1) descriptions of its central and field organization including delegations by the agency of final authority and the established places at which, and methods whereby, the public may secure information or make submittals or requests; (2) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal or informal procedures available as well as forms and instructions as to the scope and contents of all papers, reports, or examinations; and (3) substantive rules adopted as authorized by law and statements of general policy or interpretations formulated and adopted by the agency for the guidance of the public; but not rules addressed to and served upon named persons in accordance with law. No person shall in any manner be required to resort to organization or procedure not so published.

(b) *Opinions and orders.*—Every agency shall publish or, in accordance with published rule, make available to public inspection all final opinions or orders in the adjudication of cases (except those required for good cause to be held confidential and not cited as precedents) and all rules.

(c) *Public records.*—Save as otherwise required by statute, matters of official record shall in accordance with published rule be made

available to persons properly and directly concerned except information held confidential for good cause found.

The serious deficiencies in this present statute are obvious. They fall into four categories:

(1) There is excepted from the operation of the whole section "any function of the United States requiring secrecy in the public interest \* \* \*." There is no attempt in the bill or its legislative history to delimit "in the public interest," and there is no authority granted for any review of the use of this vague phrase by Federal officials who wish to withhold information.

(2) Although subsection (b) requires the agency to make available to public inspection "all final opinions or orders in the adjudication of cases," it vitiates this command by adding the following limitation: "\* \* \* except those required for good cause to be held confidential \* \* \*."

(3) As to public records generally, subsection (c) requires their availability "to persons properly and directly concerned except information held confidential for good cause found." This is a double-barreled loophole because not only is there the vague phrase "for good cause found," there is also a further excuse for withholding if persons are not "properly and directly concerned."

(4) There is no remedy in case of wrongful withholding of information from citizens by Government officials.

**PRESENT SECTION 3 OF ADMINISTRATIVE PROCEDURE ACT IS  
WITHHOLDING STATUTE, NOT DISCLOSURE STATUTE**

It is the conclusion of the committee that the present section 3 of the Administrative Procedure Act is of little or no value to the public in gaining access to records of the Federal Government. Indeed, it has had precisely the opposite effect: it is cited as statutory authority for the withholding of virtually any piece of information that an official or an agency does not wish to disclose.

Under the present section 3, any Government official can under color of law withhold almost anything from any citizen under the vague standards—or, more precisely, lack of standards—in section 3. It would require almost no effort for any official to think up a reason why a piece of information should be withheld (1) because it was in the "public interest," or (2) "for good cause found," or (3) that the person making the request was not "properly and directly concerned." And, even if his reason had not a scintilla of validity, there is absolutely nothing that a citizen seeking information can do because there is no remedy available.

**WHAT S. 1160 WOULD DO**

S. 1160 would emphasize that section 3 of the Administrative Procedure Act is not a withholding statute but a disclosure statute by the following major changes:

(1) It sets up workable standards for what records should and should not be open to public inspection. In particular, it avoids the use of such vague phrases as "good cause found" and replaces them with specific and limited types of information that may be withheld.

(2) It eliminates the test of who shall have the right to different information. For the great majority of different records, the public as a whole has a right to know what its Government is doing.

There is, of course, a certain need for confidentiality in some aspects of Government operations and these are protected specifically; but outside these limited areas, all citizens have a right to know.

(3) The revised section 3 gives to any aggrieved citizen a remedy in court.

#### DETAILED DESCRIPTION OF BILL

##### *Description of subsection (a)*

Subsection (a) deals entirely with publication of material in the Federal Register. This subsection has fewer changes from the existing law than any other; primarily because there have been few complaints about omission from the Federal Register of necessary official material. In fact, what complaints there have been have been more on the side of too much publication rather than too little.

The principal change in subsection (a) has been to deal with the exceptions to its provisions in a single subsection, subsection (e).

There are a number of minor changes which attempt to make it more clear that the purpose of inclusion of material in the Federal Register is to guide the public in determining where and by whom decisions are made, as well as where they may secure information and make submittals and requests.

There is also a provision, suggested by a number of agencies, for incorporation of other publications by reference in the Federal Register. This may be helpful in reducing the bulky present size of the Register.

The new sanction imposed for failure to publish the matters enumerated in section 3(a) was added to expressly provide that a person shall not be adversely affected by matters required to be published and not so published. This gives added incentive to the agencies to publish the required material.

The following technical changes were also made with regard to subsection 3(a):

The phrase "\* \* \* but not rules addressed to and served upon named persons in accordance with law \* \* \*" was stricken because section 3(a) as amended only requires the publication of rules of general applicability.

"Rules of procedure" was added to remove an uncertainty. "Description of forms available" was added to eliminate the need of publishing lengthy forms.

The new clause (E) is an obvious change, added for the sake of completeness and clarity.

##### *Description of subsection (b)*

Subsection (b) of S. 1160 (as subsec. (b) of sec. 3 of the Administrative Procedure Act) deals with agency opinions, orders, and rules. This Administrative Procedure Act subsection is replaced by a detailed subsection, specifying what orders, opinions, and rules must be made available. The exceptions have again been moved to a single subsection, subsection (e), dealing with exceptions.

Apart from the exemptions, agencies must make available for public inspection and copying all final opinions (including concurring and dissenting opinions); all orders made in the adjudication of cases; and those statements of policy and interpretations which have been adopted by the agency and are not required to be published in the

Federal Register; and administrative staff manuals and instructions to staff that affect any member of the public.

There is a provision for the deletion of certain details in opinions, statements of policy, interpretations, staff manuals and instructions to prevent "a clearly unwarranted invasion of personal privacy." The authority to delete identifying details after written justification is necessary in order to be able to balance the public's right to know with the private citizen's right to be secure in his personal affairs which have no bearing or effect on the general public. For example, it may be pertinent to know that unseasonably harsh weather has caused an increase in public relief costs; but it is not necessary that the identity of any person so affected be made public.

Written justification for deletion of identifying details is to be placed as preamble to "\* \* \* the opinion, statement of policy, interpretation or staff manual or instruction \* \* \*" that is made available.

Requiring the agencies to keep a current index of their orders, opinions, etc., is necessary to afford the private citizen the essential information to enable him to deal effectively and knowledgeably with the Federal agencies. This change will prevent a citizen from losing a controversy with an agency because of some obscure and hidden order or opinion which the agency knows about but which has been unavailable to the citizen simply because he had no way in which to discover it. However, considerations of time and expense cause this indexing requirement to be made prospective in application only.

Many agencies already have indexing programs, e.g., the Interstate Commerce Commission. Such indexes satisfy the requirements of this bill insofar as they achieve the purpose of the indexing requirement. No other special or new indexing will be necessary for such agencies.

Subsection (b) contains its own sanction that orders, opinions, etc., which are not properly indexed and made available to the public may not be relied upon or cited as precedent by an agency.

There are also a number of technical changes in section 3(b):

The phrase "\* \* \* and copying \* \* \*" was added because it is frequently of little use to be able to inspect orders or the like unless one is able to copy them for future reference. Hence the right to copy these matters is supplemental to the right to inspect and makes the latter right meaningful.

The addition of "\* \* \* concurring and dissenting opinions \* \* \*" is added to insure that, if one or more agency members dissent or concur, the public and the parties should have access to these views and ideas.

The enumeration of orders, etc., defines what materials are subject to section 3(b)'s requirements. The "unless" clause was added to provide the agencies with an alternative means of making these materials available through publication.

#### *Description of subsection (c)*

Subsection (c) deals with "agency records" and would have almost the reverse result of present subsection (c) which deals with "public records." Whereas the present subsection 3(c) of the Administrative Procedure Act has been construed to authorize widespread withholding of agency records, subsection 3(c) of S. 1160 requires their disclosure.

The records must be identifiable by the person requesting them, i.e., a reasonable description enabling the Government employee to locate the requested records. This requirement of identification is not to be used as a method of withholding records.

Subsection (c) contains a specific court remedy for any alleged wrongful withholding of agency records by agency personnel. The aggrieved person can bring an action in the district court where he resides, has his place of business, or in which the agency records are situated. The court may require the agency to pay costs and reasonable attorney's fees of the complainant as in other cases.

That the proceeding must be de novo is essential in order that the ultimate decision as to the propriety of the agency's action is made by the court and prevent it from becoming meaningless judicial sanctioning of agency discretion.

Placing the burden of proof upon the agency puts the task of justifying the withholding on the only party able to explain it. The private party can hardly be asked to prove that an agency has improperly withheld public information because he will not know the reasons for the agency action.

The court is authorized to give actions under this subsection precedence on the docket over other causes. Complaints of wrongful withholding shall be heard "at the earliest practicable date and expedited in every way."

*Description of subsection (d)*

This subsection provides that a record be kept of all final votes by agency members in every agency proceeding and that this record of votes be available to the public.

Agency practice in this area varies. This change makes the publication of final votes of agency members a uniform practice and provides the public with a very important part of the agency's decisional process.

*Description of subsection (e)*

Subsection (e) deals with the categories of matters which are exempt from disclosure under the bill. Exemption No. 1 is for matters specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy. The change of standard from "in the public interest" is made both to delimit more narrowly the exception and to give it a more precise definition. The phrase "public interest" in section 3(a) of the Administrative Procedure Act has been subject to conflicting interpretations, often colored by personal prejudices and predilections. It admits of no clear delineations, and it has served in many cases to defeat the very purpose for which it was intended—the public's right to know the operations of its Government. Rather than protecting the public's interest, it has caused widespread public dissatisfaction and confusion. Retention of such an exception in section 3(a) is, therefore, inconsistent with the general objective of enabling the public readily to gain access to the information necessary to deal effectively and upon equal footing with Federal agencies.

Exemption No. 2 relates only to the internal personnel rules and practices of an agency. Examples of these may be rules as to personnel's use of parking facilities or regulation of lunch hours, statements of policy as to sick leave, and the like.

Exemption No. 3 deals with matters specifically exempt from disclosure by another statute.

Exemption No. 4 is for "trade secrets and commercial or financial information obtained from any person and privileged or confidential." This exception is necessary to protect the confidentiality of information which is obtained by the Government through questionnaires or other inquiries, but which would customarily not be released to the public by the person from whom it was obtained. This would include business sales statistics, inventories, customer lists, and manufacturing processes. It would also include information customarily subject to the doctor-patient, lawyer-client, lender-borrower, and other such privileges. Specifically it would include any commercial, technical, and financial data, submitted by an applicant or a borrower to a lending agency in connection with any loan application or loan.

Exemption No. 5 relates to "inter-agency or intra-agency memorandums or letters which would not be available by law to a private party in litigation with the agency." It was pointed out in the comments of many of the agencies that it would be impossible to have any frank discussion of legal or policy matters in writing if all such writings were to be subjected to public scrutiny. It was argued, and with merit, that efficiency of Government would be greatly hampered if, with respect to legal and policy matters, all Government agencies were prematurely forced to "operate in a fishbowl." The committee is convinced of the merits of this general proposition, but it has attempted to delimit the exception as narrowly as consistent with efficient Government operation.

Exemption No. 6 contains an exemption for "personnel and medical files, and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Such agencies as the Veterans' Administration, Department of Health, Education, and Welfare, Selective Service, etc., have great quantities of files, the confidentiality of which has been maintained by agency rule but without statutory authority. There is a consensus that these files should not be opened to the public, and the committee decided upon a general exemption rather than a number of specific statutory authorizations for various agencies. It is believed that the scope of the exemption is held within bounds by the use of the limitation of "a clearly unwarranted invasion of personal privacy."

The phrase "clearly unwarranted invasion of personal privacy" enunciates a policy that will involve a balancing of interests between the protection of an individual's private affairs from unnecessary public scrutiny, and the preservation of the public's right to governmental information. The application of this policy should lend itself particularly to those Government agencies where persons are required to submit vast amounts of personal data usually for limited purposes. For example, health, welfare, and selective service records are highly personal to the person involved, yet facts concerning the award of a pension or benefit should be disclosed to the public.

Exemption No. 7 deals with "investigatory files compiled for law enforcement purposes." These are the files prepared by Government agencies to prosecute law violators. Their disclosure of such files, except to the extent they are available by law to a private party, could harm the Government's case in court.

Exemption No. 8 is directed specifically to insuring the security of our financial institutions by making available only to the Government agencies responsible for the regulation or supervision of such institutions the examination, operating, or condition reports prepared by on behalf of, or for the use of such agencies.

*Description of subsection (f)*

The purpose of this subsection is to make it clear beyond doubt that all *materials* of the Government are to be made available to the public by publication or otherwise unless explicitly allowed to be kept secret by one of the exemptions in subsection (e). Further, it is made clear that, because this section only refers to the public's right to know, it cannot, therefore, be backhandedly construed as authorizing the withholding of information from the Congress, the collective representative of the public.

*Description of subsection (g)*

This subsection provides a definition of the term "private party" which is not presently defined in the act being amended by this bill.

*Description of subsection (h)*

The 1-year period before this act goes into effect is to allow ample time for the agencies to conform their practices to the requirements of this act.

CONCLUSION

The committee feels that this bill, as amended, would establish a much-needed policy of disclosure, while balancing the necessary interests of confidentiality.

A government by secrecy benefits no one.

It injures the people it seeks to serve; it injures its own integrity and operation.

It breeds mistrust, dampens the fervor of its citizens, and mocks their loyalty.

For these reasons, the committee reports the bill with the recommendation that it be adopted, as amended.

CHANGES IN EXISTING LAW

Inasmuch as S. 1160 is new law, the provisions of subsection (4) of rule XXIX of the Standing Rules of the Senate are not applicable.



Considered and Passed House, June 20, 1966, 112 Cong. Rec. 13007\*

CLARIFYING AND PROTECTING THE RIGHT OF THE PUBLIC TO INFORMATION

Mr. MOSS. Mr. Speaker, I move to suspend the rules and pass the bill (S. 1160) to amend section 3 of the Administrative Procedure Act, chapter 324 of the act of June 11, 1946 (60 Stat. 238), to clarify and protect the right of the public to information, and for other purposes.

The Clerk read as follows:

The SPEAKER. Is a second demanded?

Mr. REID of New York. Mr. Speaker, I demand a second.

The SPEAKER. Without objection, a second will be considered as ordered.

There was no objection.

Mr. MOSS. I yield myself such time as I may consume.

Mr. Speaker, our system of government is based on the participation of the governed, and as our population grows in numbers it is essential that it also grow in knowledge and understanding. We must remove every barrier to information about—and understanding of—Government activities consistent with our security if the American public is to be adequately equipped to fulfill the ever more demanding role of responsible citizenship.

S. 1160 is a bill which will accomplish that objective by shoring up the public right of access to the facts of government and, inherently, providing easier access to the officials clothed with governmental responsibility. S. 1160 will grant any person the right of access to official records of the Federal Government, and, most important, by far the most important, is the fact this bill provides for judicial review of the refusal of access and the withholding of information. It is this device which expands the rights of the citizens and which protects them against arbitrary or capricious denials.

Mr. Speaker, let me reassure those few who may have doubts as to the wisdom of this legislation that the committee has, with the utmost sense of responsibility, attempted to achieve a balance between a public need to know and a necessary restraint upon access to information in specific instances. The bill lists nine categories of Federal documents which may be withheld to protect the national security or permit effective operation of the Government but the burden of proof to justify withholding is put upon the Federal agencies.

That is a reasonable burden for the Government to bear. It is my hope that this fact, in itself, will be a moderating influence on those officials who, on occasion, have an almost proprietary attitude toward their own niche in Government.

Mr. Speaker, I must confess to disquiet at efforts which have been made to point the Government information problems which we hope to correct here today in the gaudy colors of partisan politics. Let me now enter a firm and unequivocal denial that that is the case. Government information problems are political problems—bipartisan or nonpartisan, public problems, political problems but not partisan problems.

In assuming the chairmanship of the Special Government Information Subcommittee 11 years ago, I strongly emphasized the fact that the problems of concern to us did not start with the Eisenhower administration then in power nor would they end with that administration. At a convention of the American Society of Newspaper Editors some 10 years ago, I said:

"The problem I have dealt with is one which has been with us since the very first administration. It is not partisan, it is political only in the sense that any activity of government is, of necessity, political . . . No one party started the trend to secrecy in the Federal Government. This is a problem which will go with you and the American people as long as we have a representative government."

Let me emphasize today that the Government information problems did not start with President Lyndon Johnson. I hope, with his cooperation following

\*The bill (S. 1160) passed the Senate by voice vote without objection or debate on Oct. 13, 1965. (111 Cong. Rec. 26820).

our action here today, that they will be diminished. I am not so naive as to believe they will cease to exist.

I have read stories that President Johnson is opposed to this legislation. I have not been so informed, and I would be doing a great disservice to the President and his able assistants if I failed to acknowledge the excellent cooperation I have received from several of his associates in the White House.

I am pleased to report the fact of that cooperation to the House today. It is especially important when we recognize how very sensitive to the institution of the Presidency some of these information questions are. Despite this, I can say to you that no chairman could have received greater cooperation.

We do have pressing and important Government information problems, and I believe their solution is vital to the future of democracy in the United States. The individual instances of governmental withholding of information are not dramatic. Again, going back to statements made early in my chairmanship of the Special Subcommittee on Government Information, I repeatedly cautioned those who looked for dramatic instances that the problems were really the day-to-day barriers, the day-to-day excesses in restriction, the arrogance on occasion of an official who has a proprietary attitude toward Government. In fact, at the subcommittee's very first hearing I said:

"Rather than exploiting the sensational, the subcommittee is trying to develop all the pertinent facts and, in effect, lay bare the attitude of the executive agencies on the issue of whether the public is entitled to all possible information about the activities, plans and the policies of the Federal Government."

Now 11 years later I can, with the assurance of experience, reaffirm the lack of dramatic instances of withholding. The barriers to access, the instances of arbitrary and capricious withholding are dramatic only in their totality.

During the last 11 years, the subcommittee has, with the fullest cooperation from many in Government and from representatives of every facet of the news media, endeavored to build a greater awareness of the need to remove unjustifiable barriers to information, even if that information did not appear to be overly important. I suppose one could regard information as food for the intellect, like a proper diet for the body. It does not have to qualify as a main course to be important intellectual food. It might be just a dash of flavor to sharpen the wit or satisfy the curiosity, but it is as basic to the intellectual diet as are proper seasonings to the physical diet.

Our Constitution recognized this need by guaranteeing free speech and a free press. Mr. Speaker, those wise men who wrote that document—which was then and is now a most radical document—could not have intended to give us empty rights. Inherent in the right of free speech and of free press is the right to know. It is our solemn responsibility as inheritors of the cause to do all in our power to strengthen those rights—to give them meaning. Our actions today in this House will do precisely that.

The present law which S. 1160 amends is the so-called public information section of the 20-year-old Administration Procedure Act. The law now permits withholding of Federal Government records if secrecy is required "in the public interest" or if the records relate "solely to the internal management of an agency." Government information also may be held confidential "for good cause found." Even if no good cause can be found for secrecy, the records will be made available only to "persons properly and directly concerned." These phrases are the warp and woof of the blanket of secrecy which can cover the day-to-day administrative actions of the Federal agencies.

Neither in the Administrative Procedure Act nor its legislative history are these broad phrases defined, nor is there a recognition of the basic right of any person—not just those special classes "properly and directly concerned"—to gain access to the records of official Government actions. Above all, there is no remedy available to a citizen who has been wrongfully denied access to the Government's public records.

S. 1160 would make three major changes in the law.

First. The bill would eliminate the "properly and directly concerned" test of who shall have access to public records, stating that the great majority of records shall be available to "any person." So that there would be no undue burden on the operations of Government agencies, reasonable access regulations would be established.

Second. The bill would set up workable standards for the categories of records which may be exempt from public disclosure, replacing the vague phrases "good cause found," "in the public interest," and "internal management" with specific definitions of information which may be withheld.

Third. The bill would give an aggrieved citizen a remedy by permitting him to appeal to a U.S. district court if official records are improperly withheld. Thus, for the first time in our Government's history there would be proper arbitration of conflicts over access to Government documents.

S. 1160 is a moderate bill and carefully worked out. This measure is not intended to impinge upon the appropriate power of the Executive or to harass the agencies of Government. We are simply attempting to enforce a basic public right—the right to access to Government information. We have expressed an intent in the report on this bill which we hope the courts will read with great care.

While the bill establishes a procedure to secure the right to know the facts of Government, it will not force disclosure of specific categories of information such as documents involving true national security or personnel investigative files.

This legislation has twice been passed by the Senate, once near the end of the 88th Congress too late for House action and again last year after extensive hearings. Similar legislation was introduced in the House, at the beginning of the 89th Congress, by myself and 25 other Members, of both political parties, and comprehensive hearings were held on the legislation by the Foreign Operations and Government Information Subcommittee. After the subcommittee selected the Senate version as the best, most workable bill, it was adopted unanimously by the House Government Operations Committee.

S. 1160 has the support of dozens of organizations deeply interested in the workings of the Federal Government—professional groups such as the American Bar Association, business organizations such as the U.S. Chamber of Commerce, committees of newspapermen, editors and broadcasters, and many others. It has been worked out carefully with cooperation of White House officials and representatives of the major Government agencies, and with the utmost cooperation of the Republican members of the subcommittee; Congressman OGDEN R. REID, of New York; Congressman DONALD RUMSFELD, of Illinois; and the Honorable ROBERT P. GRIFFIN, of Michigan, now serving in the Senate. It is the fruit of more than 10 years of study and discussion initiated by such men as the late Dr. Harold L. Cross and added to by scholars such as the late Dr. Jacob Scher. Among those who have given unstintingly of their counsel and advice is a great and distinguished colleague in the House who has given the fullest support. Without that support nothing could have been accomplished. So I take this occasion to pay personal tribute to Congressman WILLIAM L. DAWSON, my friend, my confidant and adviser over the years.

Among those Members of the Congress who have given greatly of their time and effort to develop the legislation before us today are two Senators from the great State of Missouri, the late Senator Thomas Henning and his very distinguished successor, Senator EDWARD LONG who authored the bill before us today.

And there has been no greater champion of the people's right to know the facts of Government than Congressman DANTE B. FASCELL. I want to take this opportunity to pay the most sincere and heartfelt tribute to Congressman FASCELL who helped me set up the Special Subcommittee on Government Information and served as a most effective and dedicated member for nearly 10 years.

The list of editors, broadcasters and newsmen and distinguished members of the corps who have helped develop the legislation over these 10 years is endless.

But I would particularly like to thank those who have served as chairmen of Freedom of Information Committees and various organizations that have supported the legislation.

They include James Pope, formerly of the Louisville Courier-Journal, J. Russell Wiggins of the Washington Post, Herbert Brucker of the Hartford Courant, Eugene S. Pulliam of the Indianapolis News, Creed Black of the Chicago Daily News, Eugene Patterson of the Atlanta Constitution, each of whom served as chairman of the American Society of Newspaper Editors Freedom of Information Committee, and John Colburn of the Wichita Eagle & Beacon who served as chairman of both the ASNE committee and the similar committee of the American Society of Newspaper Publishers.

Also Mason Walsh of the Dallas Times Herald, David Schultz of the Redwood City Tribune, Charles S. Rowe of the Fredericksburg Free Lance Star, Richard D. Smyser of the Oak Ridge Oakridger, and Hu Blonk of the Wenatchee Daily World, each of whom served as chairman of the Associated Press Managing Editors Freedom of Information Committee; V. M. Newton, Jr., of the Tampa Tribune, Julius Frandsen of the United Press International, and Clark Mollenhoff of the Cowles Publications, each of whom served as chairman of the Sigma Delta Chi Freedom of Information Committee, and Joseph Costa, for many years the chairman of the National Press Photographers Freedom of Information Com-

mittee. The closest cooperation has been provided by Stanford Smith, general manager of the American Newspaper Publishers Association and Theodore A. Serrill, executive vice president of the National Newspaper Association.

Mr. Speaker, I strongly urge the favorable vote of every Member of this body on this bill, S. 1160.

Mr. KING of Utah. Mr. Speaker, will the gentleman yield?

Mr. MOSS. I am happy to yield to the gentleman.

Mr. KING of Utah. Mr. Speaker, I commend the distinguished gentlemen now in the well for the work he has done in bringing this bill to fruition today. The gentleman from California is recognized throughout the Nation as one of the leading authorities on the subject of freedom of information. He has worked for 12 years diligently to bring this event to pass.

Mr. Speaker. I wish to take this opportunity to voice my support of S. 1160, the Federal Public Records Act, now popularly referred to as the freedom of information bill. Let me preface my remarks by expressing to my distinguished colleague from California [Mr. Moss], chairman of the Government Information Subcommittee of the House of Representatives, and to the distinguished gentleman from Missouri, Senator EDWARD LONG, chairman of the Administrative Practices and Procedure Subcommittee of the Senate for their untiring efforts toward the advancement of the principle that the public has not only the right to know but the need to know the facts that comprise the business of Government. Under the expert guidance of these gentlemen, an exhaustive study has been conducted and a wealth of information gleaned. Equipped with a strong factual background and an understanding of the complex nature of the myriad of issues raised, we may proceed now to consider appropriate legislative action within a meaningful frame of reference.

S. 1160, the Federal Public Records Act, attempts to establish viable safeguards to protect the public access to sources of information relevant to governmental activities. Protection of public access to information sources was the original intent of the Congress when it enacted into law the Administrative Procedure Act of 1946. Regretfully, in the light of the experience of the intervening 20 years, we are confronted with an ever-growing accumulation of evidence that clearly substantiates the following conclusion: the overall intent of the Congress, as embodied in the Administrative Procedure Act of 1946, has not been realized and the specific safeguards erected to guarantee the right of public access to the information stores of Government appear woefully inadequate to perform the assigned tasks. The time is ripe for a careful and thoughtful reappraisal of the issues inherent in the right to know concept: the time is at hand for a renewal of our dedication to a principle that is at the cornerstone of our democratic society.

What are some of the major factors that have contributed to this widespread breakdown in the flow of information from the Government to the people? The free and total flow of information has been stemmed by the very real and very grave cold war crises that threaten our Nation. It is apparent that if we are to survive as a free nation, we must impose some checks on the flow of data—data which could provide invaluable assistance to our enemies.

The demands of a growing urban, industrial society has become greater both in volume and in complexity. The individual looks to his Government more and more for the satisfactory solution of problems that defy his own personal resources. The growth of the structure of Government commensurate with the demands placed upon it has given rise to confusion, misunderstanding, and a widening gap between the principle and the practice of the popular right to know. Chairman Moss has summarized this dilemma when he said "Government secrecy tends to grow as Government itself grows."

There are additional factors that must be considered. Paradoxically, the broad and somewhat obscure phraseology of section 3 of the public information section of the Administrative Procedure Act has, in effect, narrowed the stream of data and facts that the Federal agencies are and have been willing to release to the American people. Agency personnel charged with the responsibility of interpreting and enforcing the provisions of section 3 have labored under a severe handicap: their working guidelines have made for a host of varying interpretations and fostered numerous misinterpretations. Chaos and confusion have nurtured a needless choking off of information disclosure. Without realistic guidelines within which to operate, officials have exercised extreme caution in an effort to avoid the charges of premature, unwise, or unauthorized disclosure of Government information. Remedial action is called for. The primary purpose underlying S. 1160 is a long overdue and urgently needed clarification of the public information provisions of the Administrative Procedure Act.

Finally, the present condition of nonavailability of public information has perhaps been encouraged by a disregard by the American people of this truism; the freedoms that we daily exercise—our democratic society—were not easily obtained nor are they easily retained. Inroads and encroachments—be they overt or covert, be they internal or external—must be effectively guarded against. For freedoms once diminished are not readily revitalized; freedoms once lost are recovered with difficulty.

Thus far I have discussed some of the major forces that are simultaneously working toward increasing the gap that separates the principle and the practice of the people's right to know the affairs of their Government. The overriding importance of the Federal Public Records Act currently before us can be underscored by a brief examination of the highwater marks that loom large in the historical background of the present dispute concerning the legitimate bounds of the people's right to know the affairs of Government.

If the people are to be informed, they must be first accorded the right to sources of knowledge—and one of the initial queries posed by Americans and their English forebears alike was; What is the nature of the business of the legislative branch of government? Accounts of legislative activities were not always freely known by those whose destinies they were to shape. At the close of the 17th century, the House of Commons and the House of Lords had adopted regulations prohibiting the publishing of their votes and their debates. Since the bans on the publishing of votes and debates initially provided a haven of refuge from a Sovereign's harsh and often arbitrary reprisals, the elimination of these bans was difficult. Privacy was viewed as offering a means of retaining against all challenges—be they from the Sovereign or an inquiring populace—the prerogatives that the House of Parliament had struggled to secure. Not until the late 18th century did the forces favoring public accountability cause significant changes in the milieu that surrounded parliamentary proceedings. Although restrictive disclosure measures heretofore imposed were never formally repealed, their strict enforcement was no longer feasible. The forces championing the popular right to know had gained considerable strength and the odds were clearly against Parliament's retaining many of its jealously guarded prerogatives. To save face, both Houses yielded to the realities of the situation with which they were confronted and allowed representatives of the press—the eyes and ears of the people—to attend and recount their deliberations.

The annals recording the history of freedom of the press tell of dauntless printers who sought means of circumventing the bans in publicizing legislative records. As early as 1703, one Abel Boyer violated the letter and the spirit of the announced restrictions when he published monthly the Political State of Great Britain. He did so, however, without incurring the full measure of official wrath. By omitting the full names of participants in debate, and by delaying publication of the accounts of a session's deliberations until after it had adjourned, he was able to achieve his purpose. Others sought to foil the intent and dilute the effectiveness of the restrictions by revealing the activities of a committee of the House of Commons. Lest others follow similar suit, the Commons soon after passed a resolution stating:

"No news writers do presume in their letters or other papers that they disperse as minutes, or under any denomination, to intermeddle with the debates, or any other proceedings of this House, or any committee thereof."

Those who insisted on defying official pleasure were quickly brought to task. Many were imprisoned, many were fined; some were released having sworn to cease and desist from further offensive actions. Spurred by public demand for additional news, printers and editors devised a fictitious political body and proceeded to relate fictional debates. Their readers were, nevertheless, aware that the accounts were those of Parliament. Public demand for the right to know the information of Government had gained a momentum that could not be slowed. In 1789, the public point of view—a point of view that demanded the removal of the shackles of secrecy—because the parliamentary *modus operandi*. For in that year, one James Perry, of the Morning Chronicle, succeeded in his efforts to have news reporters admitted to Parliament and was able to provide his readers with an account of the previous evening's business. The efforts of Parliament to exclude representatives of the news media were channeled in new directions—with members speaking out against printers and editors, who in their opinion, were unfairly misrepresenting individual points of view; objectivity in reporting Parliament's business became their primary concern.

In the Colonies, too, Americans conducted determined campaigns paralleling those waged in England. Colonial governments demonstrated a formidable hos-

tility toward those who earnestly believed that the rank-and-file citizenry was entitled to a full accounting by its governing bodies. The power that knowledge provides was fully understood; by some it was feared. In 1671, in correspondence to his lords commissioners, Governor Berkeley, of Virginia, wrote:

"I thank God, there are no free schools nor printing; and I hope we shall not have these hundred years; for learning has brought disobedience, and heresy, and sects into the world, and printing has divulged them, and libels against the best Government. God keep us from both."

In 1725, Massachusetts newspaper printers were "ordered upon their peril not to insert in their prints anything of the Public Affairs of this province relating to the war without the order of the Government." Forty-one years were to pass until, in 1776, a motion offered by James Otis was carried and the proceedings of the Massachusetts General Court were opened to the public on the occasion of the debates surrounding the repeal of the onerous Stamp Act.

The clouds of secrecy that hovered over the American Colonies were not quickly dispelled; vestiges of concealment lingered on until well into the 18th century.

The deliberations that produced the Constitution of the United States were closed. Early meetings of the U.S. Senate were not regularly opened to the public until February of 1794. Some 177 years ago, the House of Representatives heatedly debated and finally tabled a motion that would have excluded members of the press from its sessions. It was the beginning of the 19th century before representatives of the press were formally granted admission to the Chambers of the Senate and the House of Representatives.

While the American people have long fought to expand the scope of their knowledge about Government, their achievements in this direction are being countered by the trend to delegate considerable lawmaking authority to executive departments and agencies. Effective protective measures have not always accompanied the exercise of this newly located rulemaking authority.

Access to the affairs of legislative bodies has become increasingly difficult thanks to another factor: the business of legislatures is being conducted in the committees of the parent body—committees that may choose to call an executive session and subsequently close their doors to the public.

In short, the trend toward more secrecy in government may be seen in the legislative branch. Can this trend be evidenced in the other two branches?

The scope of popular interest in Government operations has run the full gamut. The public has persevered in its assertion that it has an unquestionable right to the knowledge of the proceedings that constitute the legislative as well as the judicial and executive functions of the Government.

One of the greatest weapons in the arsenal of tyranny has been the secret arrest, trial, and punishment of those accused of wrongdoing. Individual liberties, regardless of the lipservice paid them, become empty and meaningless sentiments if they are curtailed or suspended or ignored in the darkness of closed judicial proceedings. The dangers to man's freedoms that lurk in secret judicial deliberations were recognized by the insurgent barons who forced King John to grant as one of many demands that "the King's courts of justice shall be stationary; and shall no longer follow his person; they shall be open to everyone; and justice shall no longer be sold, refused, or delayed by them." This promise was remembered by that generation of Americans that devised our scheme of government. To guarantee the optimum exercise and enjoyment by every man of his fundamental and essential liberties, the authors of the Bill of Rights incorporated these guarantees in the sixth amendment:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial."

Contemporary developments lend support to the thesis that the rights of the public to be admitted to judicial proceedings is being undermined. More and more courtrooms are being closed to the people on the grounds that the thorough and open discussion of a broad category of offenses would be repugnant to society's consensus of good taste. What is more, court powers that were once exercised within the framework of due process guarantees are being transferred to quasi-judicial agencies, before which many of the due process guarantees have been cast by the wayside.

What is the current status of information availability within the executive departments and agencies? Although the public's right to know has not been openly denied, the march of events has worked a serious diminution in the range and types of information that are being freely dispensed to inquiring citizens, their representatives in Congress, and to members of the press. Counterbalancing the presumption that in a democracy the public has the right to know the busi-

ness of its Government is the executive privilege theory—a theory whose roots run deep in the American political tradition. This concept holds that the President may authorize the withholding of such information as he deems appropriate to the national well-being. Thomas Jefferson stated the principles upon which this privilege rests in these terms:

“With respect to papers, there is certainly a public and a private side to our offices. To the former belong grants of land, patents for inventions, certain commissions, proclamations, and other papers patent in their nature.

To the other belong mere executive proceedings. All nations have found it necessary, that for the advantageous conduct of their affairs, some of these proceedings, at least, should remain known to their executive functionary only. He, of course, from the nature of the case, must be the sole judge of which of them the public interests will permit publication. Hence, under our Constitution, in requests of papers, from the legislative to the executive branch, an exception is carefully expressed, as to those which he may deem the public welfare may require not to be disclosed.”

While the bounds of the executive privilege claim have, of late, been more carefully spelled out and, in effect, narrowed, widespread withholding of Government records by executive agency officials continues in spite of the enactment of limiting statutes. In 1958, the Congress passed the Moss-Hennings bill, which granted agency heads considerable leeway in the handling of agency records but gave no official legislative sanction to a general withholding of such records from the public. The enactment of the Administrative Procedure Act held out promise for introducing a measure of uniformity in the administrative regulations that were applied to agency disclosures. According to the terms of section 3 or the public information section of this act:

“Except to the extent that there is involved (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating solely to the internal management of an agency, executive agencies are required to publish or make available to the public, their rules, statements of policy, policy interpretations and modes of operation as well as other data constituting matters of official record.”

Quoting subsection (c) of section 3:

“Save as otherwise required by statute, matters of official record shall in accordance with published rule be made available to persons properly and directly concerned except information held confidential for good cause found.”

A careful analysis of the precise wording of the widely criticized public information section offers ample evidence for doubt, as to the effectiveness of the guarantees which its authors and sponsors sought to effect. Broad withholding powers have grown out of the vague and loosely defined terms with which this act is replete. Federal agencies may curb the distribution of their records should the public interest so require. What specifically is the public interest? The Manual on the Administrative Procedure Act allows each of the agencies to determine those functions which may remain secret in the public interest. Federal agencies may limit the dissemination of a wide range of information that they deem related “solely to the internal management” of the agency. What are the limitations, if any, that are attached to this provision? Federal agencies may withhold information “for good cause found.” What constitutes such a “good cause?” Even if information sought does not violate an agency’s ad hoc definition of the “public interest”—even if information sought does not relate “solely to the internal management” of the agency or if “no good cause” can be found for its retention, agencies may decline to release records to persons other than those “properly and directly concerned.” What are the criteria that an individual must present to establish a “proper and direct concern?” We search in vain if we expect to find meaningful and uniform definitions or reasonable limitations of the qualifying clauses contained in the controversial public information section of the Administrative Procedure Act. We search in vain, for what we seek does not presently exist.

Threats to cherished liberties and fundamental rights are inherent in the relatively unchecked operations of a mushrooming bureaucracy—threats though they be more subtle are no less real and no less dangerous than those which our Founding Fathers labored to prevent.

The changes that are contained in the Federal Public Records Act before us today offer a means of restoring to the American people their free and legitimate access to the affairs of Government. It seeks to accomplish this important objective in a variety of ways. Subsection (a) of S. 1160 clarifies the types of information which Federal agencies will be required to publish in the Federal Register.

By making requisite the publication of "descriptions of an agency's central and field organization and the established places at which, the officers from whom, and the methods whereby the public may secure information, make submittals or requests, or obtain decisions," the individual may be more readily apprised by responsible officials of those aspects of administrative procedure that are of vital personal consequence. Material "readily available" to interested parties may be incorporated "by reference" in the Register. "Incorporation by reference" will provide interested parties with meaningful citations to unabridged sources that contain the desired data. The Director of the Federal Register, rather than individual agency heads, must give approval before material may be so incorporated.

Subsection (b) of the Federal Public Records Act will eliminate the vague provisions that have allowed agency personnel to classify as "unavailable to the public" materials "required for good cause to be held confidential." All material will be considered available upon request unless it clearly falls within one of the specifically defined categories exempt from public disclosure. This subsection should be a boon not only to the frustrated citizen whose requests for the right to know have been denied time and time again. The reasons for denial seldom prove satisfactory or enlightening—for all too often they are couched in administrative jargon that is meaningless to the ordinary citizen. Subsection (b) of S. 1160 should be equally valuable to harried Government officials assigned the monumental responsibility of deciding what information may be released and what must be withheld in light of the proper functioning of the Government. The information guarantees of this subsection state:

"Every agency shall, in accordance with published rules, make available for public inspection and copying (A) all final opinions (including concurring and dissenting opinions) and all orders made in the adjudication of cases, (B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register, and (C) staff manuals and instructions to staff that affect any member of the public unless such materials are promptly published and copies offered for sale."

We have labored long and hard to establish firmly the premise that the public has not only the right but the need to know. We have also accepted the fact that the individual is entitled to respect for his right of privacy. The question arises as to how far we are able to extend the right to know doctrine before the inevitable collision with the right of the individual to the enjoyment of confidentiality and privacy. Subsection (b) attempts to resolve this conflict by allowing Federal agencies to delete personally identifying details from publicly inspected opinions, policy statements, policy interpretations, staff manuals, or instructions in order "to prevent a clearly unwarranted invasion of personal privacy." Should agencies delete personal identifications that cannot reasonably be shown to have direct relationship to the general public interest, they must justify in writing the reasons for their actions. This "in writing qualification is incorporated to prevent the "invasion of personal privacy clause" from being distorted and used as a broad shield for unnecessary secrecy.

To insure that no citizen will be denied full access to data that may be of crucial importance to his case, for want of knowledge that the material exists, each agency must "maintain and make available for public inspection and copying a current index providing identifying information to the public as to any matter which is issued, adopted, or promulgated after the effective date of this act and which is required by this subsection to be made available or published."

Perhaps the most serious defect in the present law rests in the qualification contained in subsection (c) of the public information provisions which limits those to whom Federal regulatory and executive agencies may give information to "persons properly and directly concerned." These words have been interpreted over the years in such a fashion as to render this section of the Administrative Procedure Act a vehicle for the withholding from the public eye of information relevant to the conduct of Government operations. Final determination of whether or not a citizen's interest is sufficiently "direct and proper" is made by the various agencies. The taxpaying citizen who feels that he has been unfairly denied access to information has had no avenue of appeal. Subsection (c) of the proposed Federal Public Records Act legislation would require that:

"Every agency in accordance with published rules stating the time, place, and procedure to be followed, make all its records promptly available to any person."

Should any person be denied the right to inspect agency records, he could appeal to and seek review by a U.S. district court. Quoting the "agency records" subsection of S. 1160:



"Upon complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, shall have jurisdiction to enjoin the agency from withholding of agency records and information and to order the production of any agency records or information improperly withheld from the complainant. In such cases the court shall determine the matter de novo and the burden shall be upon the agency to sustain its action."

While we recognize the merits of and justifications for arguments advanced in support of limited secrecy in a government that must survive in the climate of a cold war, we must also recognize that the gains—however small—made by secrecy effect an overall reduction in freedom. As the forces of secrecy gain, the forces of freedom lose. It is, therefore, incumbent upon us to exercise prudence in accepting measures which constitute limitations on the freedoms of our people. Restrictions must be kept to a minimum and must be carefully circumscribed lest they grow and, in so doing, cause irreparable damage to liberties that are the American heritage and the American way of life.

S. 1160 seeks to open to all citizens, so far as consistent with other national goals of equal importance, the broadest possible range of information. I feel that the limitations imposed are clearly justifiable in terms of other objectives that are ranked equally important within our value system. The presumption prevails in favor of the people's right to know unless information relates to matters that are, first, specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy; second, matters related solely to the internal personnel rules and practices of any agency; third, matters specifically exempted from disclosure by other statutes; fourth, trade secrets and commercial or financial information obtained from the public and privileged or confidential; fifth, interagency or intraagency memorandums or letters which would not be available by law to a private party in litigation with the agency; sixth, personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; seventh, investigatory files compiled for law enforcement purposes except to the extent available by law to a private party; eighth, matters contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions; and ninth, geological and geophysical information and data concerning wells.

Ours is perhaps the freest government that man has known. Though it be unique in this respect, it will remain so only if we keep a constant vigilance against threats—large or small—to its principles and institutions. If the Federal Public Records Act is enacted, it will be recorded as a landmark in the continuing quest for the preservation of man's fundamental liberties—for it will go far in halting and reversing the growing trend toward more secrecy in Government and less public participation in the decisions of Government.

James Madison eloquently argued on behalf of the people's right to know when he proclaimed that "Knowledge will forever govern ignorance. And a people who mean to be their own governors must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy, or perhaps both."

This is a measure in which every Member of Congress can take great pride. In the long view, it could eventually rank as the greatest single accomplishment of the 89th Congress.

Not only does it assert in newer and stronger terms the public's right to know, but it also demonstrates anew the ultimate power of the Congress to make national policy on its own—with or without Executive concurrence—where the public interest so demands. It thus helps to reaffirm the initiative of the legislature and the balance of powers, at a time when the Congress is the object of much concern and criticism over the apparent decline of its influence in the policymaking process.

Though I took a place on the Subcommittee on Foreign Operations and Government Information only last year, I take deep pride in my service with it and in the shining role it has played in shaping this historic act. I firmly hope and expect that the act will win the unanimous support of the House.

Mr. OLSEN of Montana. Mr. Speaker, will the gentleman yield?

Mr. MOSS. I am pleased to yield to the gentleman from Montana.

Mr. OLSEN of Montana. Mr. Speaker, I too wish to commend the gentleman in the well for his great work over the years on this subject of freedom of in-

formation as to Government records. However, I do want to ask the gentleman a question with reference to the Bureau of the Census. The Bureau of the Census can only gather the information that it does gather because that information will be held confidential or the sources of information will be held to be confidential I presume that the provisions on page 5 of the bill under "Exemptions," No. (3), in other words providing that the provisions of this bill shall not be applicable to matters that are "(3) specifically exempted from disclosure by statute:"—that would exempt the Bureau of the Census from this new provision.

Mr. MOSS. That is correct.

Mr. OLSEN of Montana. I thank the gentleman.

Mr. EDMONDSON. Mr. Speaker, will the gentleman yield?

Mr. MOSS. I am very pleased to yield to my colleague.

Mr. EDMONDSON. Mr. Speaker, I rise in support of the bill and congratulate the gentleman from California for the outstanding leadership he has given to this body in a field that vitally affects the basic health of our democracy as this subject matter does.

I think the gentleman from California has won not only the respect and admiration of all of his colleagues in the House for the manner in which he has championed this worthwhile cause, but he has also won the respect and admiration of the people of the United States. I was glad to join him by introducing H.R. 5018 on the same subject and urge approval of S. 1160.

Mr. MOSS. I thank the gentleman.

Mr. MAILLIARD. Mr. Speaker, will the gentleman yield?

Mr. MOSS. I am pleased to yield to my colleague.

Mr. MAILLIARD. Mr. Speaker, I also want to compliment the gentleman for bringing to fruition many years of effort in this field.

I would like to ask my colleague a question, and of course I realize the gentleman cannot answer every question in detail. But I am very much interested in the fact that under the Merchant Marine Act where the computation of a construction subsidy is based upon an estimate that is made in the Maritime Administration, to date the Maritime Administration has refused to divulge to the companies their determination of how much the Government pays and how much the individual owner has to pay. That is based on these computations.

The Maritime Administration has never been willing to reveal to the people directly involved how the determination is made. In the gentleman's opinion, under this bill, would this kind of information be available at least to those whose direct interests are involved?

Mr. MOSS. It is my opinion that that information, unless it is exempted by statute, would be available under the terms of the amendment now before the House.

Mr. MAILLIARD. I appreciate the response of the gentleman very much indeed.

The SPEAKER. The gentleman from California [Mr. Moss] has consumed 20 minutes.

The Chair recognizes the gentleman from New York [Mr. Reid].

Mr. REID of New York. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of S. 1160, a bill to clarify and protect the right of the public to information, and for other purposes.

It is, I believe, very clear in these United States that the public's right of access, their inherent right to know, and strengthened opportunities for a free press in this country are important, are basic and should be shored up and sustained to the maximum extent possible. The right of the public to information is paramount and each generation must uphold anew that which sustains a free press.

I believe this legislation is clearly in the public interest and will measurably improve the access of the public and the press to information and uphold the principle of the right to know.

To put this legislation in clear perspective, the existing Administrative Procedure Act of 1946 does contain a series of limiting clauses which does not enhance the public's right of access. Specifically it contains four principal qualifications:

First, an individual must be "properly and directly concerned" before information can be made available. It can still be withheld for "good cause found." Matters of "internal management" can be withheld and, specifically and most importantly, section 3 of the act states at the outset that any function of the

United States requiring secrecy in the public interest" does not have to be disclosed.

Section 3 reads in its entirety as follows:

"Except to the extent that there is involved (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating solely to the internal management of an agency—

(a) **RULES.**—Every agency shall separately state and currently publish in the Federal Register (1) descriptions of its central and field organization including delegations by the agency of final authority and the established places at which, and methods whereby, the public may secure information or make submittals or requests; (2) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal or informal procedures available as well as forms and instructions as to the scope and contents of all papers, reports, or examinations; and (3) substantive rules adopted as authorized by law and statements of general policy or interpretations formulated and adopted by the agency for the guidance of the public, but not rules addressed to and served upon named persons in accordance with law. No person shall in any manner be required to resort to organization or procedure not so published.

(b) **OPINIONS AND ORDERS.**—Every agency shall publish or, in accordance with published rule, make available to public inspection all final opinions or orders in the adjudication of cases (except those required for good cause to be held confidential and not cited as precedents) and all rules.

(c) **PUBLIC RECORDS.**—Save as otherwise required by statute, matters of official record shall in accordance with published rule be made available to persons properly and directly concerned except information held confidential for good cause found."

This is a broad delegation to the Executive. Further, none of these key phrases is defined in the statute, nor has any of them—to the best of my knowledge—been interpreted by judicial decisions. The Attorney General's Manual on the Administrative Procedure Act merely states that.

"Each agency must examine its functions and the substantive statutes under which it operates to determine which of its materials are to be treated as matters of official record for the purposes of the section (section 3).

I believe that the present legislation properly limits that practice in several new and significant particulars:—

First, any person will now have the right of access to records of Federal Executive and regulatory agencies. Some of the new provisions include the requirement that any "amendment, revisions, or repeal" of material required to be published in the Federal Register must also be published; and the requirement that every agency make available for "public inspection and copying" all final opinions—including dissents and concurrences—all administrative staff manuals, and a current index of all material it has published. Also, this bill clearly stipulates that this legislation shall not be "authority to withhold information from Congress."

Second, in the bill there is a very clear listing of specific categories of exemptions, and they are more narrowly construed than in the existing Administrative Procedure Act.

Under the present law, information may be withheld—under a broad standard—where there is involved "any function of the United States requiring secrecy in the public interest." The instant bill would create an exemption in this area solely for matters that are "specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy." In my judgment, this more narrow standard will better serve the public interest.

Third, and perhaps most important, an individual has the right of prompt judicial review in the Federal district court in which he resides or has his principal place of business, or in which the agency records are situated. This is not only a new right but it is a right that must be promptly acted on by the courts, as stated on page 4 of the instant bill:

"Proceedings before the district court as authorized by this subsection shall take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way."

So the provision for judicial review is, in my judgment, an important one and one that must be expedited.

This legislation also requires an index of all decisions as well as the clear spelling out of the operational mechanics of the agencies and departments, and other certain specifics incident to the public's right to know.

I think it is important also to indicate that this new legislation would cover for example, the Passport Office of the Department of State, and would require an explanation of procedures which have heretofore never been published.

In addition, the legislation requires that there be the publication of the names and salaries of all those who are Federal employees except, of course, the exemptions that specifically apply. I think this is also salutary improvement. The exemptions, I think, are narrowly construed and the public's right to access is much more firmly and properly upheld.

Our distinguished chairman of this subcommittee, who has done so much in this House to make this legislation a reality here today, and is deserving of the commendation of this House, has pointed to the fact that a number of groups and newspaper organizations strongly support the legislation. I would merely state that it does enjoy the support of the American Society of Newspaper Editors, the American Newspaper Publishers Association, Sigma Delta Chi, AP Managing Editors, National Newspaper Association, National Press Association, National Editorial Association, the American Bar Association, the American Civil Liberties Union, the National Association of Broadcasters, the New York State Publishers Association, and others.

Specifically, Mr. Eugene Patterson, chairman of the Freedom of Information Committee of the American Society of Newspaper Editors, has said:

"We feel this carefully drawn and long-debated bill now provides Congress with a sound vehicle for action this year to change the emphasis of the present Administrative Procedure Act, which has the effect of encouraging agencies to withhold information needlessly. We believe the existing instruction to agencies—that they may withhold any information 'for good cause found,' while leaving them as sole judges of their own 'good cause'—naturally has created among some agency heads a feeling that 'anything the American people don't know won't hurt them, whereas anything they do know may hurt me.'"

Mr. Edward J. Hughes, chairman of the legislative committee of the New York State Publishers Association, has written me that obtaining "proper and workable Freedom of Information legislation at the Federal level has been of direct and great interest and importance to us." Mr. Hughes continues that passage of this legislation will "dispose constructively of a longstanding and vexing problem."

I would also say that were Dr. Harold Cross alive today, I believe he would take particular pride in the action I hope this body will take. I knew Dr. Cross and he was perhaps the most knowledgeable man in the United States in this area. He worked closely with the Herald Tribune and I believe he would be particularly happy with regard to this legislation.

Lastly, Mr. Speaker, I believe it is important to make clear not only that this legislation is needed, not only that it specifies more narrowly the areas where information can be withheld by the Government, not only that it greatly strengthens the right of access, but it also should be stated clearly that it is important—and I have no reason to doubt this—that the President sign this legislation promptly.

I would call attention to the fact that there are in the hearings some reports of agencies who, while agreeing with the objective of the legislation, have reservations or outright objections to its particular form. I hope the President will take counsel of the importance of the principle here involved, and of the action of this House today, and that he will sign the bill promptly, because this is clearly in the interest of the public's paramount right to know, of a free press and, in my judgment, in the interest of the Nation.

Mr. FULTON of Pennsylvania. Mr. Speaker, will the gentleman yield?

Mr. REID of New York. I yield to the gentleman from Pennsylvania.

Mr. FULTON of Pennsylvania. Mr. Speaker, I compliment my friend the gentleman from New York [Mr. REID] on his excellent statement, and also his dedication to duty in studying and contributing so much to working out good rules for freedom of information in Government departments and agencies.

Along with those others who have been interested in this serious problem of the right of access to Government facts, The gentleman from New York [Mr. REID] should certainly be given the highest credit.

Mr. REID of New York. I thank the gentleman.

Mr. KUNKEL. Mr. Speaker, will the gentleman yield?

Mr. REID of New York. I yield to the gentleman from Pennsylvania.

Mr. KUNKEL. Mr. Speaker, I commend the gentleman in the well and the gentleman from California for bringing this legislation to the floor.

I strongly support it.

In fact, I would almost go further than the committee does in this legislation. It is very important to have at least this much enacted promptly. I do hope the President will sign it into law promptly, because right now there are a great many instances occurring from time to time which indicate the necessity of having something like this on the statute books. It is a definite step in the right direction—I am counting on the committee doing a good overseeing job to see that it functions as intended.

Mr. REID of New York. I thank the gentleman for his thoughtful statement. I add merely that the freedom of the press must be reinsured by each generation. I believe the greater access that this bill will provide sustains that great principle.

Mr. LAIRD. Mr. Speaker, will the gentleman yield?

Mr. REID of New York. I yield to the gentleman from Wisconsin.

Mr. LAIRD. Mr. Speaker, I thank the gentleman for yielding to me. I rise in support of this legislation, S. 1160.

Mr. Speaker, this legislation is long overdue, and marks a historic breakthrough for freedom of information in that it puts the burden of proof on officials of the bureaus and agencies of the executive branch who seek to withhold information from the press and public, rather than on the inquiring individual who is trying to get essential information as a citizen and taxpayer.

Mr. Speaker, this is not a partisan bill—at least not here in the Congress. We have heard that the administration is not happy about it and has delayed its enactment for a number of years, but the overwhelming support it has received from distinguished members of the Government Operations Committee—both on the majority and minority side—and the absence of any opposition here in the House is clear evidence of the very real concern responsible Members feel over what our Ambassador to the United Nations, Arthur Goldberg, has aptly termed the credibility problem of the U.S. Government. The same concern over the credibility gap is shared by the American public and the press, and it is a great satisfaction to me that the Congress is taking even this first step toward closing it.

Our distinguished minority leader, the gentleman from Michigan [Mr. GERALD R. FORD] at a House Republican policy committee news conference last May 18, challenged the President to sign this bill. I hope the President will sign it, and beyond that, will faithfully execute it so that the people's right to know will be more surely founded in law in the future.

But Mr. Speaker, we cannot legislate candor nor can we compel those who are charged with the life-and-death decisions of this Nation to take the American people into their confidence. We can only plead, as the loyal opposition, that our people are strong, self-reliant, and courageous, and are worthy of such confidence. Americans have faced grave crises in the past and have always responded nobly. It was a great Republican who towered above partisanship who warned that you cannot fool all of the people all of the time, and it was a great Democrat, Woodrow Wilson, who said:

"I am seeking only to face realities and to face them without soft concealments."

Mr. Speaker, I would like to point out that the provisions of this bill do not take effect until 1 year after it becomes law. Thus it will not serve to guarantee any greater freedom of information in the forthcoming political campaign than we have grown accustomed to getting from the executive branch of the Government in recent years. We of the minority would be happy to have it become operative Federal law immediately, but it is perhaps superfluous to say that we are not in control of this Congress.

In any event, if implemented by the continuing vigilance of the press, the public, and the Congress, this bill will make it easier for the citizen and taxpayer to obtain the essential information about his Government which he needs and to which he is entitled. It helps to shred the paper curtain of bureaucracy that covers up public mismanagement with public misinformation, and secret sins with secret silence. I am confident that I speak for most of my Republican colleagues in urging passage of this legislation.

Mr. Speaker, I append the full text of the House Republican Policy Committee statement on the freedom of information bill, S. 1160, adopted and announced on May 18 by my friend, the distinguished chairman of our policy committee, the gentleman from Arizona [Mr. RHODES]:

REPUBLICAN POLICY COMMITTEE STATEMENT ON FREEDOM OF INFORMATION  
LEGISLATION, S. 1160

The Republican Policy Committee commends the Committee on Government Operations for reporting S. 1160. This bill clarifies and protects the right of the public to essential information. Subject to certain exceptions and the right to court review, it would require every executive agency to give public notice or to make available to the public its methods of operation, public procedures, rules, policies, and precedents.

The Republican Policy Committee, the Republican Members of the Committee on Government Operations, and such groups as the American Newspaper Publishers Association, the professional journalism society Sigma Delta Chi, the National Editorial Association and the American Bar Association have long urged the enactment of this legislation. Due to the opposition of the Johnson-Humphrey Administration, however, this proposal has been bottled up in Committee for over a year. Certainly, information regarding the business of the government should be shared with the people. The screen of secrecy which now exists is a barrier to reporters as representatives of the public, to citizens in pursuit of information vital to their welfare, and to Members of Congress as they seek to carry out their constitutional functions.

Under this legislation, if a request for information is denied, the aggrieved person has the right to file an action in a U.S. District Court, and such court may order the production of any agency records that are improperly withheld. So that the court may consider the propriety of withholding, rather than being restricted to judicial sanctioning of agency discretion, the proceedings are de novo. In the trial, the burden of proof is correctly placed upon the agency. A private citizen cannot be asked to prove that an agency has withheld information improperly for he does not know the basis for the agency action.

Certainly, as the Committee report has stated: "No Government employee at any level believes that the 'public interest' would be served by disclosure of his failures or wrongdoings . . ." For example, the cost estimates submitted by contractors in connection with the multimillion-dollar deep sea "Mohole" project were withheld from the public even though it appeared that the firm which had won the lucrative contract had not submitted the lowest bid. Moreover, it was only as a result of searching inquiries by the press and Senator KUCHEL (R., Cal.) that President Kennedy intervened to reverse the National Science Foundation's decision that it would not be "in the public interest" to disclose these estimates."

"The requirements for disclosure in the present law are so hedged with restrictions that it has been cited as the statutory authority for 24 separate classifications devised by Federal agencies to keep administrative information from public view. Bureaucratic gobbledygook used to deny access to information has included such gems as: "Eyes Only," "Limited Official Use," "Confidential Treatment," and "Limitation on Availability of Equipment for Public Preference." This paper curtain must be pierced. This bill is an important first step.

In this period of selective disclosures, managed news, half-truths, and admitted distortions, the need for this legislation is abundantly clear. High officials have warned that our Government is in grave danger of losing the public's confidence both at home and abroad. The credibility gap that has affected the Administration pronouncements on domestic affairs and Vietnam has spread to other parts of the world. The on-again, off-again, obviously less-than-truthful manner in which the reduction of American forces in Europe has been handled has made this country the subject of ridicule and jokes. "Would you believe?" has now become more than a clever saying. It is a legitimate inquiry.

Americans have always taken great pride in their individual and national credibility. We have recognized that men and nations can be no better than their word. This legislation will help to blaze a trail of truthfulness and accurate disclosure in what has become a jungle of falsification, unjustified secrecy, and misstatement by statistic. The Republican Policy Committee urges the prompt enactment of S. 1160."

Mr. PUCINSKI. Mr. Speaker, will the gentleman yield?

Mr. REID of New York. Mr. Speaker, I yield to the gentleman from Illinois.

Mr. PUCINSKI. Mr. Speaker, I rise in support of this legislation. I congratulate the gentleman in the well, the gentleman from New York [Mr. REID]

and the gentleman from California [Mr. Moss], for bringing this legislation to us. Certainly this legislation reaffirms our complete faith in the integrity of our Nation's free press.

It has been wisely stated that a fully informed public and a fully informed press need never engage in reckless or irresponsible speculation. This legislation goes a long way in giving our free press the tools and the information it needs to present a true picture of government properly and correctly to the American people.

As long as we have a fully informed free press in this country, we need never worry about the endurance of freedom in America. I congratulate the gentlemen for this very thoughtful legislation.

Mr. FASCELL. Mr. Speaker, will the gentleman yield?

Mr. REID of New York. I yield to the gentleman from Florida.

Mr. FASCELL. I thank the gentleman for yielding.

I commend the distinguished gentleman from New York for his long interest in this struggle. I compliment him also for giving strong bipartisan support, which is necessary for the achievement of this longstanding and vital goal.

Mr. Speaker, this is indeed an historic day for the people of America, for the communications media of America and the entire democratic process. It is, I am sure, a particularly gratifying day for our colleague, the distinguished gentleman from California, JOHN MOSS.

As chairman of the subcommittee he has worked tirelessly for 11 years to enact this public records disclosure law. His determination, perseverance, and dedication to principle makes possible this action today. I am proud to have been a member of the subcommittee and to have cosponsored this bill.

Mr. Speaker, this House now has under consideration a bill concerned with one of the most fundamental issues of our democracy. This is the right of the people to be fully informed about the policies and activities of the Federal Government.

No one would dispute the theoretical validity of this right. But as a matter of practical experience, the people have found the acquisition of full and complete information about the Government to be an increasingly serious problem.

A major cause of this problem can probably be attributed to the sheer size of the Government. The Federal Establishment is now so huge and so complex, with so many departments and agencies responsible for so many functions, that some confusion, misunderstanding, and contradictions are almost inevitable.

We cannot, however, placidly accept this situation or throw up our hands in a gesture of futility. On the contrary, the immensity of the Federal Government, its vast powers, and its intricate and complicated operations make it all the more important that every citizen should know as much as possible about what is taking place.

We need not endorse the devil theory or conspiratorial theory of government to realize that part of the cause of the information freeze can be blamed on some Government officials who under certain circumstances may completely withhold or selectively release material that ought to be readily and completely available.

The present bill amends section 3 of the Administrative Procedure Act of 1946. I have been in favor of such an amendment for a long time. In fact, on February 17, 1965, I introduced a companion bill, H.R. 5013, in this House. Since I first became a member of the Government Information Subcommittee 11 years ago, I have felt that legislation along these lines was essential to promote the free flow of Government information, and the case for its passage now is, if anything, ever stronger.

At first glance section 3 as now written seems innocent enough. It sets forth rules requiring agencies to publish in the Federal Register methods whereby the public may obtain data, general information about agency procedures, and policies and interpretations formulated and adopted by the agency. As a general practice this law appears to make available to the people agency opinions, orders, and public records.

However, 11 years of study, hearings, investigations, and reports have proven that this language has been interpreted so as to defeat the ostensible purpose of the law. Also under present law any citizen who feels that he has been denied information by an agency is left powerless to do anything about it.

The whole of section 3 may be rendered meaningless because the agency can withhold from the public such information as in its judgment involves "any function of the United States requiring secrecy in the public interest." This phrase is not defined in the law, nor is there any authority for any review of the

way it may be used. Again, the law requires an agency to make available for public perusal "all final opinions or orders in the adjudication of cases," but then adds, "except those required for good cause to be held confidential."

Subsection (c) orders agencies to make available its record in general "to persons properly and directly concerned except information held confidential for good cause found." Here indeed is what has been accurately described as a double-barreled loophole. It is left to the agency to decide what persons are "properly and directly concerned," and it is left to the agency to interpret the phrase, "for good cause found."

Finally, as I have already indicated, there is under this section no judicial remedy open to anyone to whom agency records and other information have been denied.

Under the protection of these vague phrases, which they alone must interpret, agency officials are given a wide area of discretion within which they can make capricious and arbitrary decisions about who gets information and who does not.

On the other hand, it should in all fairness be pointed out that these officials should be given more specific directions and guidance than are found in the present law.

For this reason I believe the passage of S. 1160 would be welcomed not only by the public, who would find much more information available to them, but by agency officials as well because they would have a much clearer idea of what they could and could not do.

The enactment of S. 1160 would accomplish what the existing section 3 was supposed to do. It would make it an information disclosure statute.

In the words of Senate Report No. 813 accompanying this bill, S. 1160 would bring about the following major changes:

"1. It sets up workable standards for what records should and should not be open to public inspection. In particular, it avoids the use of such vague phrases as "good cause found" and replaces them with specific and limited types of information that may be withheld.

"2. It eliminates the test of who shall have the right to different information. For the great majority of different records, the public as a whole has a right to know what its Government is doing. There is, of course, a certain need for confidentiality in some aspects of Government operations and these are protected specifically; but outside these limited areas, all citizens have a right to know."

As indicated under point 2 above, we all recognize the fact that some information must be withheld from public scrutiny. National security matters come first to mind, but there are other classes of data as well. These include personnel files, disclosure of which would constitute an invasion of privacy, information specifically protected by Executive order or statute, certain inter- and intra-agency memorandums and letters, trade secrets, commercial and financial data, investigatory files, and a few other categories.

Let me make another very important point. S. 1160 opens the way to the Federal court system to any citizen who believes that an agency has unjustly held back information. If an aggrieved person seeks redress in a Federal district court, the burden would fall on the agency to sustain its action. If the court enjoins the agency from continuing to withhold the information, agency officials must comply with the ruling or face punishment for contempt.

I strongly urge my colleagues to join me in giving prompt and overwhelming approval to this measure. In so doing we shall make available to the American people the information to which they are entitled and the information they must have to make their full contribution to a strong and free national government. Furthermore, we shall be reaffirming in the strongest possible manner that democratic principle that all power to govern, including the right to know is vested in the people; the people in turn gave by the adoption of the Constitution a limited grant of that unlimited power to a Federal Government and State governments.

In the constitutional grant the people expressly revalidated the guarantee of freedom of speech and freedom of the press among other guarantees, recognizing in so doing how basic are these guarantees to a constitutional, representative, and democratic government. There is no doubt about the power of the Congress to act and no serious question that it should and must.

Mr. REID of New York. I thank the gentleman from Florida. I note his long and clear dedication to freedom of the press, and his action on behalf of this bill.

Mr. HECHLER. Mr. Speaker, will the gentleman yield?



Mr. REID of New York. I am happy to yield to the gentleman from West Virginia.

Mr. HECHLER. Mr. Speaker, I add my words of commendation to the gentleman from California, the gentleman from New York, and others who have worked so hard to bring this bill to the House.

Today—June 20—is West Virginia Day. On June 20, 1863, West Virginia was admitted to the Union as the 35th State. The State motto, "Montani Semper Liberi," is particularly appropriate as we consider this freedom of information bill.

I am very proud to support this legislation, because there is much information which is now withheld from the public which really should be made available to the public. We are all familiar with the examples of Government agencies which try to tell only the good things and suppress anything which they think might hurt the image of the agency or top officials thereof. There are numerous categories of information which would be sprung loose by this legislation.

It seems to me that it would be in the public interest to make public the votes of members of boards and commissions, and also to publicize the views of dissenting members. I understand that six agencies do not presently publicize dissenting views. Also, the Board of Rivers and Harbors, which rules on billions of dollars of Federal construction projects, closes its meetings to the press and declines to divulge the votes of its members on controversial issues.

Therefore, I very much hope that this bill will pass by an overwhelming vote. Under unanimous consent, I include an editorial published in the Huntington, W. Va., Herald-Dispatch, and also an editorial from the Charleston, W. Va., Gazette:

[From the Huntington (W. Va.) Herald-Dispatch, June 16, 1966]

**"FOR FREEDOM OF INFORMATION, SENATE BILL 1160 IS NEEDED**

If ours is truly a government of, by and for the people, then the people should have free access to information on what the government is doing and how it is doing it. Exception should only be made in matters involving the national security.

Yet today there are agencies of government which seek to keep a curtain of secrecy over some of their activities. Records which ought to be available to the public are either resolutely withheld or concealed in such a manner that investigation and disclosure require elaborate and expensive techniques.

A good example occurred last summer, when the Post Office Department, in response to a Presidential directive, hired thousands of young people who were supposed to be "economically and educationally disadvantaged."

Suspicious were aroused that the jobs were being distributed as Congressional patronage to people who did not need them. But when reporters tried to get the names of the jobholders in order to check their qualifications, the Department cited a regulation forbidding release of such information.

The then Postmaster General John Gronouski finally gave out the names (which confirmed the suspicions of the press), but only after Congressional committees of Congress with jurisdiction over the Post Office Department challenged the secrecy regulations.

This incident, more than any other that has occurred recently, persuaded the U.S. Senate to pass a bill known as S. 1160 under which every agency of the federal government would be required to make all its records available to any person upon request. The bill provides for court action in cases of unjustified secrecy. And of course it makes the essential exemptions for "sensitive" government information involving national security.

Congressman DONALD RUMSFELD (R-Ill.), one of the supporters of S. 1160 in the House, calls the bill "one of the most important measures to be considered by Congress in 20 years."

"This bill really goes to the heart of news management," he declared. "If information is being denied, the press can go into Federal Court in the district where it is being denied and demand the agency produce the records."

The Congressman was critical of the press and other information media for failing to make a better campaign on the bill's behalf. He stressed that it was designed for the protection of the public and the public has not been properly warned of the need for the legislation.

"If this is true, it is probably because some newspapers fail to emphasize that press freedom is a public right, not a private privilege.

"S. 1160 would be a substantial aid in protecting the rights of the people to full information about their government. In the exercise of that right, the bill would

give the press additional responsibilities, but also additional methods of discharging them.

"If S. 1160 comes to the House floor, it will be hard to stop. The problem is to get it to the voting stage.

"We urge readers to send a letter or a card to their Congressman, telling him that the whole system of representative government is based on involvement by the people. But through lack of information, the people lose interest and subsequently they lose their rights. S. 1160 will help to prevent both losses."

"[From the Charleston (W. Va.) Gazette, June 18, 1961]

"BILL REVEALING U.S. ACTIONS TO PUBLIC VIEW NECESSITY

"Now pending in the House of Representatives is a Senate-approved bill (S. 1160) to require all federal agencies to make public their records and other information, and to authorize same in federal district courts to obtain information improperly withheld.

"This is legislation of vital importance to the American public, for it would prevent the withholding of information for the purpose of covering up wrongdoing or mistakes, and would guard against the practice of giving out only that which is favorable and suppressing that which is unfavorable.

"The measure would protect certain categories of sensitive government information, such as matters involving national security, but it would put the burden on federal agencies to prove they don't have to supply certain information rather than require interested citizens to show cause why they are entitled to it.

"Rep. DONALD RUMSFELD, R-Ill., who with Rep. JOHN E. MOSS, D-Calif., is leading the fight for the bill in the House, gave perhaps the best reason for enactment of the legislation in these words:

"Our government is so large and so complicated that few understand it well and others barely understand it at all. Yet we must understand it to make it function better."

"The Senate passed the bill by a voice vote last October. The House subcommittee on foreign operations and government information, better known as the Moss subcommittee, approved it on March 30, and the House Committee on Government Operations passed on it April 27. It's expected to go before the House next week.

"Rep. RUMSFELD, who termed the bill 'one of the most important measures to be considered by Congress in 20 years,' cited the case of the Post Office Department and summer employees last year as an example of how a government agency can distort or violate provisions of law under cover of secrecy.

"Newspapers disclosed that the Post Office Department was distributing as congressional patronage thousands of jobs that were supposed to go to economically and educationally disadvantaged youths.

"But the department used regulation 744.44, which states that the names, salaries and other information about postal employees should not be given to any individual, commercial firm, or other non-federal agency—as the basis for refusing to divulge the names of appointees to the press, four congressmen, or the Moss committee, all of whom challenged the secrecy regulations.

"In other words, the department could put political hacks into jobs designed to help disadvantaged youths, and get away with it by hiding under the cloak of a bureaucratic regulation. There finally was a reluctant authorization to release the names, but the department still refused to change the basic regulation. This sort of manipulation would be put on the run by passage of S. 1160.

"The federal government is a vast and complex operation that reaches into every state and every community, with literally millions of employees. Wherever it operates it is using public money and conducting public business, and there is no reason why it should not be held accountable for what it is doing.

"Under present laws, as Rep. RUMSFELD pointed out, 'Any bureaucrat can deny requests for information by calling up Section 3 of the Administrative Procedure Act, passed in 1946. To get information under this act, a person has to show good cause and there are numerous different reasons under the act which a federal agency can use to claim the person is not properly or directly concerned. Most of the reasons are loose catch phrases.'

"Any law or regulation that protects government officials and employees from the public view, will in the very least, incline them to be careless in the way

they conduct the public business. A law that exposes them to that view is bound to encourage competency and honesty. Certainly the pending bill is in the public interest. It should be enacted into law, and we respectfully urge the West Virginia Congressmen to give it their full support."

Mr. REID of New York. I thank the gentleman.

Mr. KUPFERMAN. Mr. Speaker, will the gentleman yield?

Mr. REID of New York. I yield to the gentleman from New York.

Mr. KUPFERMAN. Mr. Speaker, the gentleman from New York [Mr. REID] has stated the matter so well that it does not require more discussion from me on behalf of this bill. I commend the gentleman from New York and others associated with him for having brought the bill to the floor and helping us pass it today.

Mr. REID of New York. I thank the gentleman.

Mr. GRIDER. Mr. Speaker, will the gentleman yield?

Mr. REID of New York. I yield to the gentleman from Tennessee.

Mr. GRIDER. Mr. Speaker, I rise in support of S. 1160, legislation for clarifying and protecting the right of the public to information.

This legislation has been pending for more than a decade. Although few people question the people's right to know what is going on in their Government, we have quibbled for far too long over the means of making this information available. In the process we may have lost sight of the desired end result—freedom of information.

The need for maintaining security in some of our cold war dealings is not questioned here. As the Commercial Appeal says in an excellent editorial about this legislation:

"The new law would protect necessary secrecy, but the ways of the transgressor against the public interest would be much harder."

Our colleague from California [Mr. Moss] and members of this committee have done a splendid job with this legislation. This bill is clearly in the public interest.

Mr. Speaker, I include at this point in my remarks the editorial "Freedom of Information," which appeared June 16, 1966, in the Memphis Commercial Appeal:

#### FREEDOM OF INFORMATION

"The House of Representatives is scheduled to act Monday on the Freedom of Information Bill, an event of the first class in the unending struggle to let people know how governments operate. Such knowledge is an essential if there is to be sound government by the people.

This bill has been in preparation 13 years. It is coming up for a vote now because pulse feeling in Congress indicated that it will win approval this year in contrast to some other years of foot dragging by members of the House who announce for the principle but doubt the specific procedure.

The Senate has passed an identical bill.

At the heart of the proposed law is an ending of the necessity for a citizen to have to go into court to establish that he is entitled to get documents, for instance showing the rules under which a governmental agency operates, or which officials made what decisions.

This would be reversed. The official will have to prove in court that the requested document can be withheld legally.

A trend toward secrecy seems to be a part of the human nature of officials with responsibility. There are a few things that need to be done behind a temporary veil, especially in preparing the nation's defenses, often in the buying of property, and sometimes in the management of personnel."

"But the urge is to use the "classified" stamp to cover blunders, errors and mistakes which the public must know to obtain corrections.

The new law would protect necessary secrecy but the ways of the transgressor against the public interest would be much harder. The real situation is that a 1946 law intended to open more records to the public has been converted gradually into a shield against questioners. Technically the 1966 proposal is a series of amendments which will clear away the wording behind which reluctant officials have been hiding.

It results from careful preparation by JOHN MOSS (D., Calif.) with the help of many others.

It is most reassuring to have Representative Moss say of a bill which seems to be cleared for adoption that we are about to have for the first time a real guarantee of the right of the people to know the facts of government."

Mr. GRIDER. Mr. Speaker, I ask unanimous consent to revise and extend my remarks, and include an editorial.

The SPEAKER. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

Mr. VAN DEERLIN. Mr. Speaker, will the gentleman yield?

Mr. REID of New York. I am happy to yield to the gentleman from California.

Mr. VAN DEERLIN. Mr. Speaker, those of us who have served with JOHN Moss on the California delegation are well aware of the long and considerable effort which he has applied to this subject.

The Associated Press, in a story published less than a week ago, related that 13 of the 14 years this gentleman has served in the House have been devoted to developing the bill before us today. I join my colleagues in recognizing this effort, and I ask unanimous consent to include that Associated Press article in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

The article is as follows:

[From the Los Angeles (Calif.) Times, June 12, 1966]

**HOUSE APPROVAL SEEN ON RIGHT-TO-KNOW BILL—BATTLE AGAINST GOVERNMENT SECRECY, LED BY REPRESENTATIVE MOSS, OF CALIFORNIA, NEARS END**

"WASHINGTON.—A battle most Americans thought was won when the United States was founded is just now moving into its final stage in Congress.

It involves the right of Americans to know what their government is up to. It's a battle against secrecy, locked files and papers stamped "not for public inspection."

It's been a quiet fight mainly because it has been led by a quiet, careful congressman. Representative JOHN E. Moss, Democrat, of California, who has been waging it for 13 of the 14 years he has been in the House.

Now, the House is about to act on the product of the years of study, hearings, investigations and reports—a bill that in some quarters is regarded as a sort of new Magna Carta. It's called the freedom of information bill or the right to know.

It would require federal agencies to make available information about the rules they operate under, the people who run them and their acts, decisions and policies that affect the public. Large areas of government activity that must of necessity be kept secret would remain secret."

**SENATE BILL IDENTICAL**

"House approval is believed certain, and since the Senate has already passed an identical bill, it should wind up on President Johnson's desk this month.

How it will be received at the White House is not clear. In 1960, as vice president-elect, Mr. Johnson told a convention of newspaper editors "the executive branch must see that there is no smoke screen of secrecy." But the 27 federal departments and agencies that presented their views on the bill to Moss' government information subcommittee opposed its passage.

Norbert A. Schlei, assistant attorney general, who presented the main government case against the bill, said the problem of releasing information to the public was "just too complicated, too ever-changing" to be dealt with in a single piece of legislation.

"If you have enough rules," he said, "you end up with less information getting out because of the complexity of the rule system you establish . . ."

**BASIC DIFFICULTY**

"I do not think you can take the whole problem, federal governmentwide, and wrap it up in one package. That is the basic difficulty; that is why the federal agencies are ranged against this proposal."

Another government witness, Fred Burton Smith, acting general counsel of the Treasury Department, said if the bill was enacted "the executive branch will be unable to execute effectively many of the laws designed to protect the public and will be unable to prevent invasions of privacy among individuals whose records have become government records."

Smith said the exemptions contained in the bill were inadequate and its court provisions inappropriate. In addition, he said, persons without a legitimate

interest in a matter would have access to records and added that the whole package was of doubtful constitutionality."

#### STRENGTHENED FEELING

"Far from deterring him, such testimony has only strengthened Moss's feeling that Congress had to do the job of making more information available to the public because the executive branch obviously wouldn't.

The bill he is bringing to the House floor, June 20, is actually a series of amendments to a law Congress passed in 1946 in the belief it was requiring greater disclosure of government information to the public. And that, for Moss, takes care of the constitutional question.

"If we could pass a weak public information law," he asks, "why can't we strengthen it."

The 1946 law has many interpretations. And the interpretations made by the executive agencies were such that the law, which was intended to open records to the public, is now the chief statutory authority cited by the agencies for keeping them closed."

#### SECRECY PERMITTED

"The law permits withholding of records if secrecy "is required in the public interest," or if the records relate "solely to the internal management of an agency."

If a record doesn't fit those categories it can be kept secret "for good cause found." And even if no good cause is found, the information can only be given to "persons properly and directly concerned."

Between 1946, when that law was enacted, and 1958 the amount of file space occupied by classified documents increased by 1 million cubic feet, and 24 new terms were added to "top secret," "secret," and "confidential," to hide documents from public view."

They ranged from simple "nonpublic," to "while this document is unclassified, it is for use only in industry and not for public release."

#### USED VARIOUS WAYS

"The law has been used as authority for refusing to disclose cost estimates submitted by unsuccessful bidders on nonsecret contracts, for withholding names and salaries of federal employes, and keeping secret dissenting views of regulatory board members.

It was used by the Navy to stamp its Pentagon telephone directories as not for public use on the ground they related to the internal management of the Navy.

S. 1160, as the bill before the House is designated, lists specifically the kind of information that can be withheld and says the rest must be made available promptly to "any" person.

The areas protected against public disclosure include national defense and foreign policy secrets, investigatory files of law enforcement agencies, trade secrets and information gathered in labor-management mediation efforts, reports of financial institutions, personnel and medical files and papers that are solely for the internal use of an agency."

#### IMPORTANT PROVISION

"In the view of many veterans of the fight for the right to know, it's most important provision would require an agency to prove in court that it has authority to withhold a document that has been requested. Under the present law the situation is reversed and the person who wants the document has to prove that it is being improperly withheld.

The bill would require—and here is where an added burden would be placed on the departments—that each agency maintain an index of all documents that become available for public inspection after the law is enacted. To discourage frivolous requests, fees could be charged for record searches.

Moss bumped his head on the government secrecy shield during his first term in Congress when the Civil Service Commission refused to open some records to him.

"I decided right then I had better find out about the ground rules," he said in a recent interview. "While I had no background of law, I had served in the California legislature and such a thing was unheard of."

(California is one of 37 states that have open records laws.)

Moss was given a unique opportunity to learn the ground rules in his second term in Congress when a special subcommittee of Government Operations Committee was created to investigate complaints that government agencies were blocking the flow of information to the press and public.

Although only a junior member of the committee, Moss had already impressed House leaders with his diligence and seriousness of purpose and he was made chairman of the new subcommittee. His characteristics proved valuable in the venture he undertook.

The right of a free people to know how their elected representatives are conducting the public business has been taken for granted by most Americans. But the Constitution contains no requirement that the government keep the people informed.

The seeds of the secrecy controversy were sown during the first session of Congress when it gave the executive branch, in a "housekeeping" act, authority to prescribe rules for the custody, use and preservation of its record. They flourished in the climate created by the separation of the executive and legislative functions of government.

#### EXECUTIVE PRIVILEGE

"Since George Washington, Presidents have relied on a vague concept called "executive privilege" to withhold from Congress information they feel should be kept secret in the national interest.

There are constitutional problems involved in any move by Congress to deal with that issue, and S. 1160 seeks to avoid it entirely.

Moss, acting on the many complaints he receives, has clashed repeatedly with government officials far down the bureaucratic lines who have claimed "executive privilege" in refusing to divulge information, and in 1962 he succeeded in getting a letter from President John F. Kennedy stating that only the President would invoke it in the future.

President Johnson gave Moss a similar pledge last year."

#### BORNE BY NEWSPAPERS

"Until the Moss subcommittee entered the field, the battle against government secrecy had been borne mainly by newspapermen.

In 1953, the American Society of Newspaper Editors published the first comprehensive study of the growing restrictions on public access to government records—a book by Harold L. Cross entitled "The People's Right to Know."

The book provided the basis for the legislative remedy the subcommittee proceeded to seek, and Cross summed up the idea that has driven Moss ever since when he said, "the right to speak and the right to print, without the right to know, are pretty empty."

World War II, with its emphasis on security, gave a tremendous boost to the trend toward secrecy and so did the activities of the late Sen. Joseph McCarthy, Republican, of Wisconsin, as intimidated officials pursued anonymity by keeping everything they could from public view. Expansion of federal activities in recent years made the problem ever more acute.

In 1958, Moss and the late Sen. Tom Hennings, Democrat, of Missouri, succeeded in amending the old "housekeeping" law to make clear it did not grant any right for agencies to withhold their records.

Opposition of the executive branch blocked any further congressional action. Moss, hoping to win administration support, did not push his bill until he was convinced this year it could not be obtained.

Moss feels S1160 marks a legislative milestone in the United States.

"For the first time in the nation's history," he said recently, "the people's right to know the facts of government will be guaranteed." There is wide agreement with this view, but warnings against too much optimism are also being expressed."

Noting the exemptions written into the bill, a Capitol Hill veteran observed, "Any bureaucrat worthy of the name should be able to find some place in those exemptions to tuck a document he doesn't want seen."

Mr. SHRIVER. Mr. Speaker, will the gentleman yield?

Mr. REID of New York. I am happy to yield to the gentleman from Kansas.

Mr. SHRIVER. Mr. Speaker, I rise in support of S. 1160 which clarifies and strengthens section 3 of the Administrative Procedure Act relating to the right of the public to information.

Six years ago when President Johnson was Vice President-elect he made a statement before the convention of the Associated Press Managing Editors Association which was often repeated during hearings on this bill. He declared: "In the years ahead, those of us in the executive branch must see that there is no smokescreen of secrecy. The people of a free country have a right to know about the conduct of their public affairs."

Mr. Speaker, over the past 30 years more and more power has been concentrated in the Federal Government in Washington. Important decisions are made each day affecting the lives of every individual.

Today we are not debating the merits of the growth of Federal Government. But as the Government grows, it is essential that the public be kept aware of what it is doing. Ours is still a system of checks and balances. Therefore as the balance of government is placed more and more at the Federal level, the check of public awareness must be sharpened.

For more than a decade such groups as the American Newspaper Publishers Association, Sigma Delta Chi, the National Editorial Association, and the American Bar Association have urged enactment of this legislation. More than a year ago the Foreign Operations and Government Information Subcommittee of the Committee on Government Operations held extensive hearings on this legislation.

At that time Mr. John H. Colburn, editor and publisher of the Wichita, Kans., Eagle and Beacon, which is one of the outstanding daily newspapers in mid-America, testified in behalf of the American Newspaper Publishers Association.

Mr. Colburn pointed to a screen of secrecy which is a barrier to reporters, as representatives of the public—to citizens in pursuit of information vital to their business enterprises—and is a formidable barrier to many Congressmen seeking to carry out their constitutional functions.

Mr. Colburn, in testifying before the subcommittee, stated:

"Let me emphasize and reiterate the point made by others in the past: Reporters and editors seek no special privileges. Our concern is the concern of any responsible citizen. We recognize that certain areas of information must be protected and withheld in order not to jeopardize the security of this Nation. We recognize legitimate reasons for restricting access to certain other categories of information, which have been spelled out clearly in the proposed legislation.

What disappoints us keenly—what we fail to comprehend is the continued opposition of Government agencies to a simple concept. That is the concept to share the legitimate business of the public with the people."

In calling for congressional action to protect the right to know of the people, Mr. Colburn declared:

Good government in those complex periods needs the participation, support and encouragement of more responsible citizens. Knowing that they can depend on an unrestricted flow of legitimate information would give these citizens more confidence in our agencies and policymakers. Too many now feel frustrated and perplexed.

Therefore, it is absolutely essential that Congress take this step to further protect the rights of the people, also to assure more ready access by Congress, by adopting this disclosure law."

Mr. Speaker, John Colburn and many other interested citizens have made a strong case for this legislation. It is regrettable that it has been bottled up in committee for so long a time.

This bill clarifies and protects the right of the public to essential information. This bill revises section 3 of the Administrative Procedure Act to provide a true Federal public records statute by requiring the availability, to any member of the public, of all of the executive branch records described in its requirements, except those involving matters which are within nine stated exemptions.

Under this legislation, if a request for information is denied, the aggrieved person has the right to file an action in a district court, and such court may order the production of any agency records that are improperly withheld. In such a trial, the burden of proof is correctly upon the agency.

It should not be up to the American public—or to the press—to fight daily battles just to find out how the ordinary business of their government is being conducted. It should be the responsibility of the agencies and bureaus, who conduct this business, to tell them.

We have heard a great deal in recent times about a credibility gap in the pronouncements emanating from official Government sources. In recent years we heard an assistant secretary of defense defend the Government's right to lie. We have seen increasing deletion of testimony by administration spokesmen be-

fore congressional committees and there has been questions raised whether this was done for security reasons or political reasons.

This legislation should help strengthen the public's confidence in the Government. Our efforts to strengthen the public's confidence in the Government. Our efforts to strengthen the public's right to know should not stop here. As representatives of the people we also should make sure our own house is in order. While progress has been made in reducing the number of closed-door committee sessions, the Congress must work to further reduce so-called executive sessions of House and Senate committees. Serious consideration should be given to televising and permitting radio coverage of important House committee hearings.

I hope that the Joint Committee on the Organization of the Congress will give serious considerations to these matters in its recommendations and report.

Mr. REID of New York. Mr. Speaker, I yield the remainder of my time to the gentleman from Illinois [Mr. RUMSFELD].

Mr. MONAGAN. Mr. Speaker, will the gentleman yield?

Mr. RUMSFELD. I am happy to yield to the distinguished gentleman from Connecticut, who serves on this subcommittee.

Mr. MONAGAN. Mr. Speaker, I wish to express my support for this legislation and also to commend the chairman of our subcommittee, who has literally come from his doctor's care to be here today to lead the House in the acceptance of this monumental piece of legislation. His work has been the sine qua non in bringing this important legislation to fruition.

Mr. Speaker, I am happy to support S. 1160, an act to clarify and protect the right of the public to information.

This legislation is a landmark in the constant struggle in these days of big government to preserve for the people access to the information possessed by their own servants. Certainly it is impossible to vote intelligently on issues unless one knows all the facts surrounding them and it is to keep the public properly informed that this legislation is offered today.

I should like to take this opportunity to congratulate our chairman, the gentleman from California [Mr. Moss] on the passage of this significant bill. Over the years he has fought courageously and relentlessly against executive coverup of information which should be available to the people. The reporting and passage of this bill have come only after many years of constant work by the gentleman from California and as we send this bill to the President for signature our chairman should feel proud in the significant role that he has played in raising permanent standards of regulations on the availability of public information. This is a noteworthy accomplishment and will do much to maintain popular control of our growing bureaucracy.

I am happy to have worked with the Subcommittee on Foreign Operations and Government Information and with the House Committee on Government Operations on this bill and to have shared to some degree in the process which has refined this legislation, obtained concurrence of the executive branch and reaches its culmination now.

Mr. HARDY. Mr. Speaker, will the gentleman yield?

Mr. RUMSFELD. I am happy to yield to the distinguished gentleman from Virginia, who also served on the Subcommittee on Government Information.

Mr. HARDY. I thank my good friend for yielding and commend him for his work on this bill.

Mr. Speaker, I just wish to express my support for this measure. I should like for the Members of the House to know that I wholeheartedly support it, and that I am particularly happy the chairman of our subcommittee, the gentleman from California [Mr. Moss] is back with us today. I know he has not been in good health recently, and I am happy to see him looking so well. I congratulate him for the fine job he has done on this most important subject and I am glad to have been privileged to work with him on the subcommittee.

Mr. GROSS. Mr. Speaker, will the gentleman yield?

Mr. RUMSFELD. I yield to the gentleman from Iowa.

Mr. GROSS. I join my friend, the gentleman from Illinois, in support of this legislation, but I want to add that it will be up to the Congress, and particularly to the committee which has brought the legislation before the House, to see to it that the agencies of Government conform to this mandate of Congress. It will be meaningless unless Congress does do a thorough oversight job, and I have in mind the attempt already being made to destroy the effectiveness of



the General Accounting Office as well as the efforts of the Defense Department to hide the facts.

Mr. RUMSFELD. The gentleman's comments are most pertinent. Certainly it has been the nature of Government to play down mistakes and to promote successes. This has been the case in the past administrations. Very likely this will be true in the future.

There is no question but that S. 1160 will not change this phenomenon. Rather, the bill will make it considerably more difficult for secrecy-minded bureaucrats to decide arbitrarily that the people should be denied access to information on the conduct of Government or on how an individual Government official is handling his job.

Mr. Speaker, the problem of excessive restrictions on access to Government information is a nonpartisan problem, as the distinguished chairman, the gentleman from California (Mr. Moss) has said. No matter what party has held the political power of Government, there have been attempts to cover up mistakes and errors.

Significantly, S. 1160 provides for an appeal against arbitrary decisions by spelling out the ground rules for access to Government information, and, by providing for a court review of agency decisions under these ground rules, S. 1160 assures public access to information which is basic to the effective operation of a democratic society.

The legislation was initially opposed by a number of agencies and departments, but following the hearings and issuance of the carefully prepared report—which clarifies legislative intent—much of the opposition seems to have subsided. There still remains some opposition on the part of a few Government administrators who resist any change in the routine of government. They are familiar with the inadequacies of the present law, and over the years have learned how to take advantage of its vague phrases. Some possibly believe they hold a vested interest in the machinery of their agencies and bureaus, and there is resentment to any attempt to oversee their activities either by the public, the Congress or appointed Department heads.

But our democratic society is not based upon the vested interests of Government employees. It is based upon the participation of the public who must have full access to the facts of Government to select intelligently their representatives to serve in Congress and in the White House. This legislation provides the machinery for access to Government information necessary for an informed, intelligent electorate.

Mr. Speaker, it is a great privilege for me to be able to speak on behalf of Senate bill 1160, the freedom-of-information bill, which provides for establishment of a Federal public records law.

I believe that the strong bipartisan support enjoyed by S. 1160 is indicative of its merits and of its value to the Nation. Twice before, in 1964 and 1965, the U.S. Senate expressed its approval of this bill. On March 30, 1966, the House Subcommittee on Foreign Operations and Government Information favorably reported the bill, and on April 27, 1966, the House Committee on Government Operations reported the bill out with a do-pass recommendation. It remains for the House of Representatives to record its approval and for the President to sign the bill into law.

I consider this bill to be one of the most important measures to be considered by Congress in the past 20 years. The bill is based on three principles:

First, that public records, which are evidence of official government action, are public property, and that there should be a positive obligation to disclose this information upon request.

Second, this bill would establish a procedure to guarantee individuals access to specific public records, through the courts if necessary.

Finally, the bill would designate certain categories of official records exempt from the disclosure requirement.

I believe it is important also to state what the bill is not. The bill does not affect the relationship between the executive and legislative branches of Government. The report and the legislation itself specifically point out that this legislation deals with the executive branch of the Federal Government in its relationship to all citizens, to all people of this country.

The very special relationship between the executive and the legislative branches is not affected by this legislation.

As the bill and the report both state:

"Members of the Congress have all of the rights of access guaranteed to 'any person' by S. 1160, and the Congress has additional rights of access to all

Government information which it deems necessary to carry out its functions."

Mr. SKUBITZ. Mr. Speaker, will the gentleman yield?

Mr. RUMSFELD. I yield to the gentleman from Kansas who has been very active in behalf of this legislation.

Mr. SKUBITZ. Mr. Speaker, I rise in support of S. 1160. Passage of this legislation will create a more favorable climate for the people's right to know—a right that has too long languished in an environment of bureaucratic negativism and indifference.

From the beginning of our Republic until now, Federal agencies have wrongfully withheld information from members of the electorate. This is intolerable in a form of government where the ultimate authority must rest in the consent of government.

Democracy can only operate effectively when the people have the knowledge upon which to base an intelligent vote.

The bill grants authority to the Federal district court to order production of records improperly withheld and shifts the burden of proof to the agency which chooses to withhold information.

If nothing else, this provision will imbue Government employees with a sense of caution about placing secrecy stamps on documents that a court might order to be produced at a later time. Thus inefficiency or worse will be less subject to concealment.

Mr. QUIE. Mr. Speaker, will the gentleman yield?

Mr. RUMSFELD. I am happy to yield to the gentleman from Minnesota.

Mr. QUIE. Mr. Speaker, may I ask the gentleman, will this enable a Member of Congress to secure the names of people who work for the Post Office Department or any other department?

Mr. RUMSFELD. I know the gentleman almost singlehandedly worked very effectively to bring about the disclosure of such information at a previous point in time. It is certainly my opinion, although the courts would ultimately make these decisions, that his efforts would have been unnecessary had this bill been the law. Certainly there is no provision in this legislation that exempts from disclosure the type of information to which the gentleman refers that I know of.

Mr. QUIE. I thank the gentleman and want to commend him on the work he has done in bringing out this legislation. I believe it is an excellent bill.

#### GENERAL LEAVE TO EXTEND

Mr. REID of New York. Mr. Speaker, will the gentleman yield to me for 1 second?

Mr. RUMSFELD. I am happy to yield to the gentleman from New York, who serves as the ranking minority member of the subcommittee.

Mr. REID of New York. Mr. Speaker, in order that the gentleman may complete his statement, may I ask unanimous consent that any Member of the House may have 5 legislative days in which to include his thoughts and remarks in the Record on this bill?

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. RUMSFELD. Mr. Speaker, in the seconds remaining, I do want to commend my colleague and good friend, the gentleman from California. As the able chairman of this subcommittee, he has worked diligently and effectively these past 11 years to secure a very important right for the people of this country. Bringing this legislation to the floor today is a proper tribute to his efforts. Certainly his work and the work of others whose names have been mentioned, the gentleman from Michigan, now a Member of the other body, Mr. GRIFFIN, who served so effectively as the ranking minority member of our subcommittee and the ranking minority member of our full committee, the gentlewoman from New Jersey (Mrs. DWYER), all shared in the effort and work that resulted in this most important and thoughtful piece of legislation.

Mr. Speaker, I do wish to make one other point about the bill. This bill is not to be considered, I think it is safe to say on behalf of the members of the committee, a withholding statute in any sense of the term. Rather, it is a disclosure statute. This legislation is intended to mark the end of the use of such phrases as "for good cause found," "properly and directly concerned," and "in the public interest," which are all phrases which have been used in the past by individual officials of the executive branch in order to justify, or at least to seem to justify, the withholding of information that properly belongs in the hands of the public.

It is our intent that the courts interpret this legislation broadly, as a disclosure statute and not as an excuse to withhold information from the public.

I must add that the disclosure of Government information is particularly important today because Government is becoming involved in more and more aspects of every person's personal and business life, and so the access to information about how Government is exercising its trust becomes increasingly important. Also, people are so busy today bringing up families, making a living, that it is increasingly difficult for a person to keep informed. The growing complexity of Government itself makes it extremely difficult for a citizen to become and remain knowledgeable enough to exercise his responsibilities as a citizen; without Government secrecy it is difficult, with Government secrecy it is impossible.

Of course, withholding of information by Government is not new. The Federal Government was not a year old when Senator Maclay of Pennsylvania asked the Treasury Department for the receipts Baron von Stueben had given for funds advanced to him. Alexander Hamilton refused the request.

In the United States, three centuries of progress can be seen in the area of access to Government information. Based on the experience of England, the Founders of our Nation established—by law and by the acknowledgment of public men—the theory that the people have a right to know. At local, State, and Federal levels it has been conceded that the people have a right to information.

James Russell Wiggins, editor of the Washington Post, argues eloquently against Government secrecy in his book, "Freedom or Secrecy." He says:

"We began the century with a free government—as free as any ever devised and operated by man. The more that government becomes secret, the less it remains free. To diminish the people's information about government is to diminish the people's participation in government. The consequences of secrecy are not less because the reasons for secrecy are more. The ill effects are the same whether the reasons for secrecy are good or bad. The arguments for more secrecy may be good arguments which, in a world that is menaced by Communist imperialism, we cannot altogether refute. They are, nevertheless, arguments for less freedom."

In August of 1822, President James Madison said:

"Knowledge will forever govern ignorance. And a people who mean to be their own governors, must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy, or perhaps both."

Thomas Jefferson, in discussing the obligation of the press to criticize and oversee the conduct of Government in the interest of keeping the public informed, said:

"Were it left to me to decide whether we should have a government without newspapers or newspaper without government, I should not hesitate for a moment to prefer the latter. No government ought to be without censors; and where the press is free, none ever will."

President Woodrow Wilson said in 1913:

"Wherever any public business is transacted, wherever plans affecting the public are laid, or enterprises touching the public welfare, comfort or convenience go forward, wherever political programs are formulated, or candidates agreed on—over that place a voice must speak, with the divine prerogative of a people's will, the words: 'Let there be light.'"

House Report No. 1497, submitted to the House by the Committee on Government Operations to accompany S. 1160, concludes:

"A democratic society requires an informed, intelligent electorate, and the intelligence of the electorate varies as the quantity and quality of its information varies. A danger signal to our democratic society in the United States is the fact that such a political truism needs repeating. And repeated it is, in textbooks and classrooms, in newspapers and broadcasts.

"The repetition is necessary because the ideals of our democratic society have outpaced the machinery which makes that society work. The needs of the electorate have outpaced the laws which guarantee public access to the facts in government. In the time it takes for one generation to grow up and prepare to join the councils of government—from 1946 to 1966—the law which was designed to provide public information about government has become the government's major shield of secrecy.

"S. 1160 will correct this situation. It provides the necessary machinery to assure the availability of government information necessary to an informed electorate."

Mr. Speaker, I was interested to learn that Leonard H. Marks, Director of the U.S. Information Agency—USIA—recently suggested before the Overseas Press Club in New York City the development of a treaty “guaranteeing international freedom of information.” To be sure, this is a commendable suggestion, and one which I would be delighted to hear more about. For the time being, however, I am concerned with the freedom-of-information question here in the United States. Here is our basic challenge. And it is one which we have a responsibility to accept.

The political organization that goes by the name of the United States of America consists of thousands of governing units. It is operated by millions of elected and appointed officials. Our Government is so large and so complicated that few understand it well and others barely understand it at all. Yet, we must understand it to make it function better.

In this country we have placed all our faith on the intelligence and interest of the people. We have said that ours is a Government guided by citizens. From this it follows that Government will serve us well only if the citizens are well informed.

Our system of government is a testimony to our belief that people will find their way to right solutions given sufficient information. This has been a magnificent gamble, but it has worked.

The passage by the House of S. 1160 is an important step toward insuring an informed citizenry which can support or oppose public policy from a position of understanding and knowledge.

The passage of S. 1160 will be an investment in the future; an investment which will guarantee the continuation of our free systems guided by the people.

Mr. Speaker, I urge the passage of this legislation. It merits the enthusiastic support of each Member of the House of Representatives.

Mr. HALL. Mr. Speaker, will the gentleman yield?

Mr. RUMSFELD. I will be happy to yield to the distinguished gentleman from Missouri.

Mr. HALL. Mr. Speaker, I appreciate the gentleman's comments. I hardly see how it can help but improve the practice of separation of the powers as it is conducted in the executive branch of the Government. However, in the days of the right to lie rather than no comment and in the days when reportorial services are being asked to be the handmaidens of Government rather than give them full disclosure, I think it is important to have this legislation.

Mr. Speaker, I want to express my strong support, and to urge the support of my colleagues for the freedom of information bill, designed to protect the right of the public to information relating to the actions and policies of Federal agencies. This bill has been a long time in coming, too long I might add, since the withholding of information, it is designed to prevent, has been a fact of life under the present administration.

I believe this bill is one of the most important pieces of legislation to be considered by Congress, and I support its enactment 100 percent.

As in all such bills, however, the mere passage of legislation will not insure the freedom of information which we hope to achieve. For there are many ways by which executive agencies, determined to conceal public information, can do so, if and when they desire. Where there is a will, there is a way, and while this bill will make that way more difficult, it will take aggressive legislative review and oversight to insure the public's right to know.

To indicate the challenge that lies ahead, I need only refer again to an article from the Overseas Press Club publication Dateline 66, which I inserted in the CONGRESSIONAL RECORD on May 12. Assistant Secretary of Defense for Public Affairs Arthur Sylvester was quoted by CBS Correspondent Morely Safer as saying at a background meeting that—

“Anyone who expects a public official to tell the truth is stupid—”

And as if to emphasize his point, Sylvester was quoted as saying, again:

Did you hear that? Stupid!

Subsequently, at Mr. Sylvester's request, I inserted his letter in reply to the charge, but, since that occasion, at least four other correspondents have confirmed the substance of Morely Safer's charges, and to this date to my knowledge, not a single correspondent present at that meeting in July of 1965, has backed up the Sylvester so-called denial.

So, I repeat that the passage of this legislation will not, in itself, insure the public's right to know, but it is an important first step in that direction. As long as there are people in the administration who wish to cover up or put

out misleading information, it will take vigorous action by the Congress and the Nation's press to make our objectives a reality. Passage of this bill is a great step, on the part of the legislative branch of the U.S. Government, toward proper restoration of the tried and true principle of separation of powers.

Mr. DOLE. Mr. Speaker, will the gentleman yield to me?

Mr. RUMSFELD. I will be happy to yield to the distinguished gentleman from Kansas, who also serves on the Special Subcommittee on Government Information.

Mr. DOLE. Mr. Speaker, I rise in support of S. 1160, which would clarify and protect the right of the public to information.

Since the beginnings of our Republic, the people and their elected Representatives in Congress have been engaged in a sort of ceremonial contest with the executive' bureaucracy over the freedom-of-information issue. The dispute has, to date, failed to produce a practical result.

Government agencies and Federal officials have repeatedly refused to give individuals information to which they were entitled and the documentation of such unauthorized withholding—from the press, the public, and Congress—is voluminous. However, the continued recital of cases of secrecy will never determine the basic issue involved, for the point has already been more than proven. Any circumscription of the public's right to know cannot be arrived at by congressional committee compilations of instances of withholding, nor can it be fixed by presidential fiat. At some point we must stop restating the problem, authorizing investigations, and holding hearings, and come to grips with the problem.

In a democracy, the public must be well informed if it is to intelligently exercise the franchise. Logically, there is little room for secrecy in a democracy. But, we must be realists as well as rationalists and recognize that certain Government information must be protected and that the right of individual privacy must be respected. It is generally agreed that the public's knowledge of its Government should be as complete as possible, consonant with the public interest and national security. The President by virtue of his constitutional powers in the fields of foreign affairs and national defense, without question, has some derived authority to keep secrets. But we cannot leave the determination of the answers to some arrogant or whimsical bureaucrat—they must be written into law.

To that end, I joined other members of this House in introducing and supporting legislation to establish a Federal public records law and to permit court enforcement of the people's right to know.

This bill would require every agency of the Federal Government to "make all its records promptly available to any person," and provides for court action to guarantee the right of access. The proposed law does, however, protect nine categories of sensitive Government information which would be exempted.

The protected categories are matters—

- "(1) specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy;
- (2) related solely to the internal personnel rules and practices of any agency;
- (3) specifically exempted from disclosure by statute;
- (4) trade secrets and commercial or financial information obtained from any person and privileged or confidential;
- (5) interagency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with the agency;
- (5) personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (7) investigatory files compiled for law enforcement purposes except to the extent available by law to a private party;
- (8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions; and
- (9) geological and geophysical information and data (including maps) concerning wells.

The bill gives full recognition to the fact that the President must at times act in secret in the exercise of his constitutional duties when it exempts from availability to the public matters that are "specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy."

Thus, the bill takes into consideration the right to know of every citizen while affording the safeguards necessary to the effective functioning of Government.

The balances have too long been weighted in the direction of executive discretion, and the need for clear guidelines is manifest. I am convinced that the answer lies in a clearly delineated and justifiable right to know.

This bill is not perfect, and some critics predict it will cause more confusion without really enhancing the public's right to know. In my opinion, it is at least a step in the right direction and, as was stated in an editorial in the Monday, June 13, issue of the Wichita Eagle:

"It's high time this bill became law. It should have been enacted years ago. Everyone who is interested in good government and his own rights must hope that its passage and the President's approval will be swift."

Mr. JOELSON. Mr. Speaker, I am pleased to support this legislation which protects the right of the public to information. I believe that in a democracy, it is vital that public records and proceedings must be made available to the public in order that we have a fully informed citizenry. I think that the only time that information should be withheld is where there are overriding considerations of national security which require secrecy, where disclosure might result in an unwarranted invasion of personal privacy, impede investigation for law enforcement purposes, or divulge valuable trade or commercial secrets.

Mr. ROSENTHAL. Mr. Speaker, as a member of the House Committee on Government Operations, I am particularly anxious to offer my strongest support for this measure, S. 1160, and praise for its cosponsor, the gentleman from California [Mr. Moss]. I would also like to offer my thanks to our distinguished chairman, the gentleman from Illinois [Mr. Dawson] for his firm leadership in bringing this measure before the House.

In S. 1160, we have a chance to modernize the machinery of Government and in so doing, further insure a fundamental political right. Democracies derive legitimacy from the consent of the governed. And consent is authoritative when it is informed. In assuring the rights of the citizenry to know the work of its Government, therefore, we provide a permanent check and review of power. And, as many of us on both side of the aisle have pointed out, the continuous growth of Federal powers—particularly that of the executive branch—can be cause for general concern.

It is the disposition of bureaucracies to grow. And frequently, they cover and conceal many of their practices. Institutions as well as people can be ruled by self-interest.

Accordingly, the House Government Operations Committee, and its Subcommittee on Foreign Operations and Government Information, have given particular attention to the information policies of our executive agencies. Through extensive study, the committee has found important procedural loopholes which permit administrative secrecy and thus threaten the public's right to know. Continued vigilance in this area has, for example, revised the notorious house-keeping statute which allowed agencies to withhold certain records. Similar pressure from Congress resulted in President Kennedy's and President Johnson's limitation of the use of Executive privilege in information policy.

The measure before us today continues the search for more open information procedures. For 20 years, the Administrative Procedure Act, in section III, has been an obstacle rather than a means to information availability. The section has usually been invoked to justify refusal to disclose. In the meantime, members of the public have had no remedy to force disclosures or appeal refusals. Our entire information policy, therefore, has been weighed against the right to know and in favor of executive need for secrecy.

I believe S. 1160 takes important steps to rectify that imbalance. Certain ambiguities in section III of the Administrative Procedure Act are clarified. Thus, the properly and directly concerned test access to records is eliminated. Records must now be available, in the new language, to "any person." Instead of the vague language of "good cause found" and "public interest," new standards for exemptable records are specified. And, perhaps most important, aggrieved citizens are given appeal rights to U.S. district courts. This procedure will likely prove a deterrent against excessive or questionable withholdings.

This legislation, Mr. Speaker, should be of particular importance to all Members of Congress. We know, as well as anyone, of the need to keep executive information and practices open to public scrutiny. Our committee, and particularly our subcommittee, headed by our energetic colleague from California, has put together proposals which we believe will reinforce public rights and democratic review.

Mr. POFF. Mr. Speaker, it was my privilege to support S. 1160 today designed to protect the right of the American public to receive full and complete disclosures from the agencies of their Government.

Today, as never before, the Federal Government is a complex entity which touches almost every fiber of the fabric of human life. Too often, the overzealous bureaucrat uses his discretionary power to blot out a bit of intelligence which the people have the right to know. This is true not only with respect to military activities for which there may, on occasion, be a valid reason for withholding full disclosure until after the execution of a particular military maneuver, but also in the case of strictly political decisions in both foreign and domestic fields.

Thomas Jefferson once said that if he could choose between government without newspapers or newspapers without government, he would unhesitatingly choose the latter. The press, in performing its responsibility of digging out facts about the operation of the giant Federal Government should not be restricted and hampered. Yet there are some 24 classifications used by Federal agencies to withhold information from the American people. When Government officials make such statements as "a government has the right to lie to protect itself" and "the only thing I fear are the facts," it is obvious that the need for collective congressional action in the field of public information is acute. In the unique American system, the people need to know all the facts in order that their judgments may be based upon those facts. Anything less is a dilution of the republican form of government.

Mr. BENNETT. Mr. Speaker, legislation of this type has been long needed. The delay, however, is easy to understand because it is a difficult subject in which to draw the precise lines needed without overstepping into areas that might be dangerous to our country. It is my belief that the measure before us does handle the matter in a proper and helpful manner and I am glad to support it.

Mr. CLANCY. Mr. Speaker, a number of important duties and engagements in Cincinnati prevent me from being on the House floor today. However, if it were possible for me to be present today, I would vote for the Freedom of Information Act, S. 1160.

The problem of Government secrecy and news manipulation has reached appalling proportions under the current administration. Both at home and abroad, the credibility of the U.S. Government has repeatedly been called into question.

Not only has the truth frequently been compromised, but in some instances Government spokesmen have more than distorted the facts, they have denied their existence. This shroud of secrecy and deception is deplorable. The man in the street has a right to know about his Government, and this includes its mistakes.

The Cincinnati Enquirer has, in two editorials on the subject of the public's right to know the truth about the activities of its Government, called for passage of the legislation we are considering today. I include these editorials with my remarks at this point because I believe they will be of interest to my colleagues:

[From the Cincinnati (Ohio) Enquirer, June 15, 1966]

#### LET'S OPEN UP FEDERAL RECORDS

"Next Monday the House of Representatives is scheduled to come finally to grips with an issue that has been kicking around official Washington almost since the birth of the Republic—an issue that Congress thought was solved long ago. The issue, in briefest form, is the public's right to know.

Most Americans probably imagine that their right to be informed about what their government is doing is unchallenged. They may wonder about the need for any legislation aimed at reaffirming it. But the fact of the matter is that the cloak of secrecy has been stretched to conceal more and more governmental activities and procedures from public view. Many of these activities and procedures are wholly unrelated to the nation's security or to individual Americans' legitimate right to privacy. They are matters clearly in the public realm.

The legislation due for House consideration next Monday is Senate Bill 1160, the product of a 13-year study of the entire problem of freedom of information directed by Representative JOHN E. MOSS (R., Calif.). The bill has already won Senate approval, and only an affirmative House vote next Monday is necessary to send it to President Johnson's desk.

All of the 27 Federal departments and agencies that have sent witnesses to testify before the House subcommittee that conducted hearings on the bill have opposed it. One complaint is that the issue is too complex to be dealt with in a single piece of legislation.

But Representative Moss feels—and a Senate majority obviously agree with him—that the right of Federal officials to classify government documents has been grossly misused to conceal errors and to deny the public information it is entitled to have.

The bill makes some clear and necessary exemptions—national defense and foreign policy secrets, trade secrets, investigatory files, material collected in the course of labor-management mediation, reports of financial institutions, medical files and paper designed solely for the internal use of a governmental agency.

“Most important, perhaps, the bill would put on the governmental agency the burden of proving that a particular document should be withheld from public view. As matters stand today, the person who seeks a particular document must prove that it is being improperly withheld; the Moss bill would require that the Federal agency involved prove that its release would be detrimental.

“It may be easy for rank-and-file Americans to imagine that the battle Representative Moss has been leading for more than a decade is a battle in the interests of the Nation’s information media. But the right of a free press is not the possession of the publishers and editors; it is the right of the man in the street to know. In this case, it is his right to know about his government—its failures and errors, its triumphs and its expenditures.

“The House should give prompt approval to Senate Bill 1160, and President Johnson should sign it when it reaches his desk.”

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[From the Cincinnati (Ohio) Enquirer, May 29, 1966]

#### THE RIGHT TO KNOW

“It is easy for many Americans to fall into the habit of imagining that the constitutional guarantees of a free press are a matter of interest and concern only to America’s newspaper publishers. And perhaps there are still a few publishers who entertain the same notion.

“In reality, however, the right to a free press is a right that belongs to the public. It is the main in the street’s right to know—in particular, his right to know what his servants in government are doing. Unhappily, however, it is a right whose preservation requires a battle that is never fully won. For at every level of government, there are officials who think that their particular province should be shielded from public scrutiny.

“Another important stride in the right direction came the other day when the House Government Operations Committee unanimously approved a freedom of information bill (Senate Bill 1160). The bill is an attempt to insure freedom of information without jeopardizing the individual’s right of privacy. It exempts nine specific categories of information—including national security, the investigative files of law enforcement agencies and several others. But it clearly reaffirms the citizen’s right to examine the records of his government and the right of the press to do the same in his behalf.

“Senate Bill 1160 is the culmination of a 10-year effort to clarify the provisions of the Administrative Procedure Act, which is so broad that it permits most Federal agencies to define their own rules on the release of information to the press and the public.

“The House should press ahead, accept the recommendations of its committee and translate Senate Bill 1160 into law.”

Mr. EDWARDS of Alabama. Mr. Speaker, I rise in support of S. 1160 which is effectively the same as my bill, H.R. 6739, introduced March 25, 1965.

This measure should have been approved and signed into law long ago as a means of giving the American citizen a greater measure of protection against the natural tendencies of the bureaucracy to prevent information from circulating freely.

I am hopeful that in spite of the President’s opposition to this bill, and in spite of the opposition of executive branch agencies and departments, the President will not veto it.

This measure will not by any means solve all of our problems regarding the citizen’s right to know what his Government is doing. It will still be true that we must rely on the electorate’s vigorous pursuit of the information needed to make self-government work. And we will still rely on the work of an energetic and thorough corps of news reporters.

As an example of the need for this bill I have previously presented information appearing on page 12600 of the CONGRESSIONAL RECORD for June 8. It shows that



one Government agency has made it a practice to refuse to yield information which is significant to operation of the law.

This kind of example is being repeated many times over. In a day of swiftly expanding Government powers, and in a day on which thoughtful citizens the country over are concerned with the encroachment of Government into the lives of all of us, the need for this bill is clear.

Mrs. REID of Illinois. Mr. Speaker, as the sponsor of H.R. 5021, one of the companion bills to S. 1160 which we are considering today, I rise in support of the public's right to know the facts about the operation of their Government. I rise, also, in opposition to the growing and alarming trend toward greater secrecy in the official affairs of our democracy.

It is indeed incongruous that although Americans are guaranteed the freedoms of the Constitution, including freedom of the press, there is no detailed Federal statute outlining the orderly disclosure of public information so essential to proper exercise of this freedom. Yet, the steady growth of bigger government multiplies rather than diminishes the need for such disclosure and the necessity for supplying information to the people. Certainly no one can dispute the fact that access to public records is vital to the basic workings of the democratic process, for it is only when the public business is conducted openly, with appropriate exceptions, that there can be freedom of expression and discussion of policy so vital to an honest national consensus on the issues of the day. It is necessary that free people be well informed, and we need only to look behind the Iron Curtain to see the unhappy consequences of the other alternative.

The need for a more definitive public records law has been apparent for a long time. We recognize today that the Administrative Procedure Act of 1946, while a step in the right direction, is now most inadequate to deal with the problems of disclosure which arise almost daily in a fast-moving and technological age—problems which serve only to lead our citizens to question the integrity and credibility of their Government and its administrators.

But while I do not condone indiscriminate and unauthorized withholding of public information by any Government official, the primary responsibility, in my judgment, rests with us in the Congress. We, as the elected representatives of the people, must provide an explicit and meaningful public information law, and we must then insure that the intent of Congress is not circumvented in the future. The Senate recognized this responsibility when it passed S. 1160 during the first session last year, and I am hopeful that Members of the House will overwhelmingly endorse this measure before us today.

I do not believe that any agency of Government can argue in good faith against the intent of this legislation now under consideration, for the bill contains sufficient safeguards for protecting vital defense information and other sensitive data which might in some way be detrimental to the Government or individuals if improperly released. S. 1160 contains basically the same exceptions as recommended in my bill—H.R. 5021. In sponsoring H.R. 5021, I felt that it would enable all agencies to follow a uniform system to insure adequate dissemination of authorized information, thereby removing much of the confusion resulting from differing policies now possible under existing law.

Government by secrecy, whether intentional or accidental, benefits no one and, in fact, seriously injures the people it is designed to serve. This legislation will establish a much-needed uniform policy of disclosure without impinging upon the rights of any citizen. S. 1160 is worthy legislation, and it deserves the support of every one of us.

Mr. RHODES of Arizona. Mr. Speaker, at a recent meeting of the House Republican policy committee a policy statement regarding S. 1160, freedom-of-information legislation, was adopted. As chairman of the policy committee, I would like to include at this point in the RECORD the complete text of this statement:

REPUBLICAN POLICY COMMITTEE STATEMENT ON FREEDOM OF INFORMATION  
LEGISLATION, S. 1160

"The Republican Policy Committee commends the Committee on Government Operations for reporting S. 1160. This bill clarifies and protects the right of the public to essential information. Subject to certain exceptions and the right to court review, it would require every executive agency to give public notice or to make available to the public its methods of operation, public procedures, rules, policies, and precedents.

"The Republican Policy Committee, the Republican Members of the Committee on Government Operations, and such groups as the American Newspaper Publishers Association, the professional journalism society Sigma Delta Chi, the National Editorial Association and the American Bar Association have long urged the enactment of this legislation. Due to the opposition of the Johnson-Humphrey Administration, however, this proposal has been bottled up in Committee for over a year. Certainly, information regarding the business of the government should be shared with the people. The screen of secrecy which now exists is a barrier to reporters as representatives of the public, to citizens in pursuit of information vital to their welfare, and to Members of Congress as they seek to carry out their constitutional functions.

"Under this legislation, if a request for information is denied, the aggrieved person has a right to file an action in a U.S. District Court, and such court may order the production of any agency records that are improperly withheld. So that the court may consider the propriety of withholding, rather than being restricted to judicial sanctioning of agency discretion, the proceedings are de novo. In the trial, the burden of proof is correctly placed upon the agency. A private citizen cannot be asked to prove that an agency has withheld information improperly for he does not know the basis for the agency action.

"Certainly, as the Committee report has stated: "No Government employee at any level believes that the 'public interest' would be served by disclosure of his failures or wrongdoings . . ." For example, the cost estimates submitted by contractors in connection with the multimillion-dollar deep sea "Mohole" project were withheld from the public even though it appeared that the firm which had won the lucrative contract had not submitted the lowest bid. Moreover, it was only as a result of searching inquiries by the press and Senator KUCHEK (R., Cal.) that President Kennedy intervened to reverse the National Science Foundation's decision that it would not be "in the public interest" to disclose these estimates.

"The requirements for disclosure in the present law are so hedged with restrictions that it has been cited as the statutory authority for 24 separate classifications devised by Federal agencies to keep administrative information from public view. Bureaucratic gobbledygook used to deny access to information has included such gems as: "Eyes Only," "Limited Official Use," "Confidential Treatment," and "Limitation on Availability of Equipment for Public Reference." This paper curtain must be pierced. This bill is an important first step.

"In this period of selective disclosures, managed news, half-truths, and admitted distortions, the need for this legislation is abundantly clear. High officials have warned that our Government is in grave danger of losing the public's confidence both at home and abroad. The credibility gap that has affected the Administration pronouncements on domestic affairs and Vietnam has spread to other parts of the world. The on-again, off-again obviously less-than-truthful manner in which the reduction of American forces in Europe has been handled has made this country the subject of ridicule and jokes. "Would you believe?" has now become more than a clever saying. It is a legitimate inquiry.

"Americans have always taken great pride in their individual and national credibility. We have recognized that men and nations can be no better than their word. This legislation will help to blaze a trail of truthfulness and accurate disclosure in what has become a jungle of falsification, unjustified secrecy, and misstatement by statistic. The Republican Policy Committee urges the prompt enactment of S. 1160."

Mr. SCHMIDHAUSER. Mr. Speaker, I believe approval of S. 1160 is absolutely essential to the integrity and strength of our democratic system of government because as the Federal Government has extended its activities to help solve the Nation's problems, the bureaucracy has developed its own form of procedures and case law, which is not always in the best interests of the public. Under the provisions of this measure, these administrative procedures will have to bear the scrutiny of the public as well as that of Congress. This has long been overdue.

Mr. ROUSH. Mr. Speaker, I rise in support of this freedom of information bill. I felt at the time it was acted upon by the Government Operations Committee, of which I am a member, that it was one of the most significant pieces of legislation we had ever acted upon. In a democracy the government's business is the people's business. When we deprive the people of knowledge of what their government is doing then we are indeed treading on dangerous ground. We are trespassing on their right to know. We are depriving them of the opportunity to examine critically the efforts to those who are chosen to labor on their behalf. The

strength of our system lies in the fact that we strive for an enlightened and knowledgeable electorate. We defeat this goal when we hide information behind a cloak of secrecy. We realize our goal when we make available, to those who exercise their right to choose, facts and information which which lead them to enlightened decisions.

Mr. ANDERSON of Illinois. Mr. Speaker, I rise in support of S. 1160. The purpose of this bill is to amend section 3 of the Administrative Procedures Act and thereby to lift the veil of secrecy that makes many of the information "closets" of executive agencies inaccessible to the public. The basic consideration involved in passage of this bill, which will clarify and protect the right of the public to information, is that in a democracy like ours the people have an inherent right to know, and government does not have an inherent right to conceal.

Certainly to deny to the public information which is essential neither to government security nor to internal personal and practical functions is to deny any review of policies, findings, and decisions. It would be hard to imagine any agency, including those of executive charter, which is entitled to be above public examination and criticism.

The need for legislation to amend the present section of the Administrative Procedures Act is especially apparent when we consider that much of the information now withheld from the public directly affects matters clearly within the public domain.

For too long and with too much enthusiasm by some Government agencies and too much acquiescence by the public, executive agencies have become little fiefdoms where the head of a particular agency assumes sole power to decide what information shall be made available and then only in an attitude of noblesse oblige.

S. 1160 will amend section 3 of the Administrative Procedures Act by allowing any person access to information—not just those "persons properly and directly concerned." And if access is denied to him he may appeal the agency's decision and apply to the Federal courts.

Consider the contractor whose low bid has been summarily rejected without any logical explanation or the conscientious newspaperman who is seeking material for a serious article that he is preparing on the operations of a particular agency of Government. In many instances if records can in one fashion or another be committed to the "agency's use only" or "Government security" filing cabinets, the contractor or newsman will be denied information simply by having the agency classify him as a person not "properly and directly concerned." When this occurs, the arbitrary use of the power of government can thwart an investigation which is in the public interest.

It was Thomas Jefferson who wrote :

I have sworn upon the altar of God eternal hostility against every form of tyranny over the mind of man.

It is precisely this tyranny over the "mind of man" which is aided and abetted by a lack of freedom of information within government.

I support the efforts contained within this bill to at least partially unshackle some of the restraints on the free flow of legitimate public information that have grown up within bureaucracy in recent years.

Mr. ROGERS of Florida. Mr. Speaker, in a time where public records are more and more becoming private instruments of the Government and personal privacy part of Government record, I am pleased that we are taking steps to eliminate part of the cloud of secrecy which has covered so many parts of the Government.

As an instrument of the people, we have long had the obligation under the Constitution to lay bare the mechanics of government. But the growing tendency, I am afraid, has been to cover up through administrative "magic," much of that information which is public domain.

Through this legislation we will emphasize once again the public's right to know. It is through sheer neglect that we must again define persons "directly concerned" as the American public. For they are the most concerned. The American public must have the right of inspection into its own government or that government fails to belong to the public.

Doting out partial information only cripples the electorate which needs to be strong if a democratic government is to exist.

But this is only half the battle in keeping the scales of democracy in balance. While we are striving to keep the citizens informed in the workings of their government, we must also protect the citizen's right of privacy.

The alarming number of instances of governmental invasion into individual privacy is as dangerous, if not more so, than the instances of government se-

crecy. At almost every turn the Government has been encroaching without law into the business—and yes, even into the private thoughts—of the individual.

This is probably the fastest growing and potentially the most dangerous act in our Nation today.

The instances of wiretapping by governmental agencies have become so commonplace that it no longer stuns the average citizen. But such a repulsive act cannot afford to go uncorrected. Such practices should never be permitted without a court order.

When we discover the training of lockpickers, wiretappers, safecrackers, and eavesdroppers in governmental agencies, the bounds of a democratic society have been overstepped and we approach the realm of a police state.

Let us not be satisfied that we are correcting some of the evils of a much too secretive bureaucracy.

Let us also remember that if we do not stop those inquisitive tentacles which threaten to slowly choke all personal freedoms, we will soon forget that our laws are geared to protect personal liberty.

"Where law ends," William Pitt said, "Tyranny begins."

Action is also needed by the Congress to stop this illegal and unauthorized governmental invasion of a citizen's privacy.

Mr. GALLAGHER. Mr. Speaker, history and American tradition demand passage today of the freedom of information bill. This measure not only will close the final gap in public information laws, but it will once and for all establish the public's right to know certain facts about its government.

In recent years we have seen both the legislative and the executive branches of our Government demonstrate a mutual concern over the increase of instances within the Federal Government in which information was arbitrarily denied the press or the public in general. In 1958, Congress struck down the practice under which department heads used a Federal statute, permitting them to regulate the storage and use of Government records, to withhold these records from the public. Four years later, President Kennedy limited the concept of "Executive privilege," which allowed the President to withhold information from Congress, to only the President, and not to his officers. President Johnson last year affirmed this limitation.

But one loophole remains: Section 3 of the Administrative Procedure Act of 1946, the basic law relating to release of information concerning agency decisions and public access to Government records. S. 1160 would amend this section.

Congress enacted this legislation with the intent that the public's right to information would be respected. Unfortunately, some Government officials have utilized this law for the diametrically opposed use of withholding information from Congress, the press, and the public.

Under the cloak of such generalized phrases in section 3 as "in the public interest" or "for good cause found," virtually any information, whether actually confidential or simply embarrassing to some member of the Federal Government, could be withheld. As Eugene Paterson, editor of the Atlanta Constitution and chairman of the Freedom of Information Committee of the American Society of Newspapers said, such justifications for secrecy "could clap a lid on just about anybody's out-tray."

But more than contemporary needs, this bill relates to a pillar of our democracy, the freedom expressed in the first amendment guaranteeing the right of speech.

"Inherent in the right to speak and the right to print was the right to know—"

States Dr. Harold L. Cross, of the ASNE's Freedom of Information Committee. He pointed out:

"The right to speak and the right to print, without the right to know, are pretty empty."

James Madison, who was chairman of the committee that drafted the first Constitution, had this to say:

"Knowledge will forever govern ignorance, and a people who mean to be their own governors, must arm themselves with the power knowledge gives. A popular government without popular information or means of acquiring it, is but a prologue to a farce or a tragedy or perhaps both."

This is the crux of the question. A free society needs the information required for judgments about the operation of its elected representatives, or it is no longer a free society. Naturally, a balance has to be maintained between the public's right to know and individual privacy and national security.

It is here that the freedom of information bill comes to grips with the central problem of the issue by substituting nine specific exemptions to disclosure for general categories, and by setting up a court review procedure, under which an aggrieved citizen could appeal with the withholding information to a U.S. district court.

One of the most important provisions of the bill is subsection C, which grants authority to the Federal district courts to order production of records improperly withheld. This means that for the first time in the Government's history, a citizen will no longer be at the end of the road when his request for a Government document arbitrarily has been turned down by some bureaucrat. Unless the information the citizen is seeking falls clearly within one of the exemptions listed in the bill, he can seek court action to make the information available.

An important impact of the provision is that in any court action the burden of the proof for withholding is placed solely on the agency. As might be expected, Government witnesses testifying before the House Foreign Operations and Government Information Subcommittee on the bill, vigorously opposed the court provision. They particularly did not like the idea that the burden of proof for withholding would be placed on the agencies, arguing that historically, in court actions, the burden of proof is the responsibility of the plaintiff. But, as the committee report points out:

"A private citizen cannot be asked to prove that an agency has withheld information improperly because he will not know the reasons for the agency action."

It can be anticipated that the judicial review provision, if nothing else, will have a major salutary effect, in that Government employees, down the line, are going to be very cautious about placing a secrecy stamp on a document that a district court later might order to be produced. A monumental error in judgment of this type certainly will not enhance an employee's status with his superiors, nor with anyone else in the executive branch.

I am glad to note the judicial review section has an enforcement clause which provides that if there is a noncompliance with a court order to produce records, the responsible agency officers can be cited for contempt.

There has been some speculation that in strengthening the right of access to Government information, the bill, as drafted, may inadvertently permit the disclosure of certain types of information now kept secret by Executive order in the interest of national security.

Such speculation is without foundation. The committee, throughout its extensive hearings on the legislation and in its subsequent report, has made it crystal clear that the bill in no way affects categories of information which the President—as stated in the committee report—has determined must be classified to protect the national defense or to advance foreign policy. These areas of information most generally are classified under Executive Order No. 10501.

I would like to reiterate that the bill also prevents the disclosure of other types of "sensitive" Government information such as FBI files, income tax auditors' manual, records of labor-management mediation negotiations and information a private citizen voluntarily supplies.

The FBI would be protected under exemption No. 7 prohibiting disclosures of "investigatory files." Income tax auditors' manual would be protected under No. 2—"related solely to internal personnel rules and practices." Details of labor-management negotiations would be protected under No. 4—"trade secrets and commercial or financial information." Information from private citizens would be protected under No. 6—information which would be an "invasion of privacy."

With the Government becoming larger and more complex, now is the time for Congress to establish guidelines for informational disclosure. As secrecy in Government increases, freedom of the people decreases; and the less citizens know about their Government, the more removed they become from its control. The freedom of information bill, Mr. Speaker, gives meaning to the freedom of speech amendment.

Mr. GURNEY. Mr. Speaker, I intend to vote in favor of this vitally important freedom of information bill. With all we hear about the necessity of "truth" bills, such as truth in lending and truth in packaging, I think it is significant that the first of these to be discussed on the floor of this House should be a "truth in Government" bill.

Surely there can be no better place to start telling the truth to the people of America than right here in their own Government. This is especially true in a time such as we have now, when the "credibility gap" is growing wider every day. It has come to the point where even Government leaders cannot believe each other.

This is a bill that should not be necessary—there should be no question but that records of a nonsecurity and nonpersonal nature ought to be available to the public. But recent practice in many agencies and departments has made more than clear the need for action such as we are taking today.

We cannot expect the American people to exercise their rights and responsibilities as citizens when they cannot even find out what their Government is doing with their money. If it were permitted to continue, this policy of secrecy could be the cornerstone of a totalitarian bureaucracy. Even today it constitutes a serious threat to our democratic institutions.

It is not only the citizens and the press who cannot get information from their Government. Even Senators and Members of the House of Representatives are told by nonsecurity departments that such routine information as lists of their employees will not be furnished them. Incredible as this is, I think most of us here have run into similar roadblocks.

The issue is a simple one: that the public's business ought to be open to the public. Too many agencies seem to have lost sight of the fact that they work for the American people. When this attitude is allowed to flourish, and when the people no longer have the right to information about their Government's activities, our system has been seriously undermined.

The bill we consider today is essential if we are to stop this undermining and restore to our citizens their right to be well-informed participants in their Government.

I urge by colleagues to join me in voting for the passage of this bill.

Mrs. DWYER. Mr. Speaker, the present bill is one of the most important to be considered during the 89th Congress. It goes to the heart of our representative and democratic form of government. If enacted, and I feel certain it will be, it will be good for the people and good for the Federal Government.

This bill is the product of 10 years of effort to strengthen the people's right to know what their Government is doing, to guarantee the people's access to Government records, and to prevent Government officials from hiding their mistakes behind a wall of official secrecy.

During these 10 years, we have conducted detailed studies, held lengthy and repeated hearings, and compiled hundreds of cases of the improper withholding of information by Government agencies. Congress is ready, I am confident, to reject administration claims that it alone has the right to decide what the public can know.

As the ranking minority member of the Committee on Government Operations, and as a sponsor of legislation similar to the pending bill, I am proud to pay tribute to the chairman and members of the Subcommittee on Foreign Operations and Government Operations for the long and careful and effective work they have done in alerting the country to the problem and in winning acceptance of a workable solution.

Under present law, Mr. Speaker, improper withholding of information has increased—largely because of loopholes in the law, vague and undefined standards, and the fact that the burden of proof is placed on the public rather than on the Government.

Our bill will close these loopholes, tighten standards, and force Federal officials to justify publicly any decision to withhold information.

Under this legislation, all Federal departments and agencies will be required to make available to the public and the press all their records and other information not specifically exempted by law. By thus assuring to all persons the right of access to Government records, the bill will place the burden of proof on Federal agencies to justify withholding of information. And by providing for court review of withholding of information, the bill will give citizens a remedy for improper withholding, since Federal district courts will be authorized to order the production of records which are found to be improperly withheld.

On the other hand, Mr. Speaker, the legislation is designed to recognize the need of the Government to prevent the dissemination of official information which could damage the national security or harm individual rights. Among the classes of information specifically exempted from the right-to-know provisions of the bill are national defense and foreign policy matters of classified secrecy as specifically determine by Executive order, trade secrets and private business data, and material in personnel files relating to personal and private matters the use of which would clearly be an invasion of privacy.

Aside from these and related exceptions, relatively few in number, it is an unassailable principle of our free system that private citizens have a right to

obtain public records and public information for the simple reason that they need it in order to behave as intelligent, informed and responsible citizens. Conversely, the Government has an obligation, which the present bill makes clear and concrete, to make this information fully available without unnecessary exceptions or delay—however embarrassing such information may be to individual officials or agencies or the administration which happens to be in office.

By improving citizens' access to Government information, Mr. Speaker, this legislation will do two things of major importance: it will strengthen citizen control of their Government and it will force the Government to be more responsible and prudent in making public policy decisions.

What more can we ask of any legislation?

Mr. MATSUNAGA. Mr. Speaker, I rise in support of S. 1160, a bill to clarify and protect the right of the public to information, and to commend the gentleman from California [Mr. Moss] and his subcommittee for reporting the bill out. As chairman of the subcommittee, the gentleman from California [Mr. Moss] has devoted 10 years to a fight for acceptance by the Congress of freedom-of-information legislation. It was not until 1964 that such a bill was passed by the Senate.

Last year the Senate again acted favorably on such a bill and now in this House, the Subcommittee on Government Operations has finally reported the bill to the floor principally through the effort of the gentleman from California [Mr. Moss].

The passage of this bill is in culmination of his long and determined effort to protect the American public from the evils of secret government. Although there has been some talk that the Government agencies are against this measure, the President will certainly not veto it. When signed into law, this bill will serve as a lasting monument to the distinguished and dedicated public servant from California, Mr. JOHN E. MOSS.

As it has been analytically observed by the editor of the Honolulu Star Bulletin:

"What is demanded is not the right to snoop. What is demanded is the people's right to know what goes on in the government that rules them with their consent.

Representative government—government by the freely elected representatives of the people—succeeds only when the people are fully informed.

All sorts of evils can hide in the shadows of governmental secrecy. History has confirmed time and again that when the spotlight is turned on wrongdoing in public life, the people are quick to react.

Freedom of information—the people's right to know—is the best assurance we have that our government will operate as it should in the public interest."

Mr. Speaker, I congratulate the gentleman from California [Mr. Moss] upon his final success in his untiring efforts, for there is no doubt in my mind that this bill will pass without any dissenting vote, but I nevertheless urge unanimous vote.

Mr. HUNGATE. Mr. Speaker, democratic forms of government, in order to be truly representative of popular will, need to be readily accessible and responsive to the demands of the people. Our system of government has characteristically offered numerous avenues of access open to the people. It is equally true that, down through the years, our governmental machinery has grown increasingly complex, not only in regard to size, but in the performance of its activities as well. This growing complexity has, quite justifiably, brought to ultimate fruition a revitalized awareness and concern for the need and right of the people to have made available to them information about the affairs of their Government.

S. 1160, the Federal Public Records Act, a bill authored by my distinguished and capable colleague from Missouri, Senator EDWARD V. LONG, captures the imagination of countless millions of responsible Americans, who know only too well the frustration of being rejected information to which they justly deserve access.

For far too long, guidelines for the proper disclosure of public information by the Government has been ambiguous and at times have placed unwarranted restraint on knowledge that, according to our democratic tradition, should be made readily available to a free and literate society.

Mr. Speaker, I congratulate the gentleman from California, [Mr. Moss], chairman of the Government Information Subcommittee of the House of Representatives, and my colleague from Missouri, Senator EDWARD V. LONG, for their spirited conviction and farsightedness in working for this historical landmark for freedom. It is both an honor and privilege to support the passage of this bill.

Mr. CLARENCE J. BROWN, JR. Mr. Speaker, I should like to go on record as favoring S. 1160, the freedom of information bill; H.R. 13196, the Allied Health Professions Training Act; and H.R. 15119, the Unemployment Insurance Amendments of 1966. All of these measures passed the House last week, but my vote was unrecorded due to my absence from the House when the bills were acted upon.

During this period I was in Georgia, where I had the pleasure of addressing the Georgia Press Association, to meet a commitment made several months ago when I was named judge of the Georgia Press Association's annual Better Newspapers Contest.

My absence from the House came at a time when it was apparent that no very controversial legislation would be up for consideration and vote. These three bills passed either unanimously or with a very small negative vote.

As you might properly assume from the reason for my absence, I am particularly interested in and pleased with the passage of the freedom of information bill, which originated in the Government Operations Committee on which I serve.

I am also pleased at the passage of H.R. 15119, the unemployment insurance amendments bill which provides for a long overdue modernization of the Federal-State unemployment compensation system.

These bills have long been needed, and I am proud to be a Member of the House in the 89th Congress at the time of their passage.

As a newspaper publisher and radio station manager, I have been interested in public access to public records and public business since my journalistic career began. As a member of Sigma Delta Chi and a past president of the Central Ohio Professional Chapter of Sigma Delta Chi, I am dedicated to the proposition expressed in the biblical admonition that the "truth shall make men free." I am also a supporter of Jefferson's view suggesting that, given a choice between government without newspapers and newspapers without government, I would prefer the latter.

If one cannot support the principle of the availability to the public of its governmental records, as covered in this bill, one cannot support the principle of freedom and democracy upon which our Nation is built.

While as I feel the freedom of information bill could still be strengthened in some respects, I am delighted with it as a tremendous step in reaffirming the people's right to know. Every good journalist also rejoices, because the bill will make easier the job of the dedicated, inquiring newspaperman. It will not prevent "government by press release" or the seduction of some reporters by thinking that "handouts" tell the whole story, but it does make life a little easier for all of us who just want to get the facts, Mr. Speaker.

While the record will show that I was paired in favor of all three of these bills, I did want to take this opportunity to express my support publicly for them and, in particular, for the freedom of information bill, which I think is a real milestone for this Nation.

The SPEAKER. The question is on the motion of the gentleman from California [Mr. Moss], that the House suspend the rules and pass the bill S. 1160.

The question was taken; and the Speaker announced that two-thirds had voted in favor thereof.

Mr. REID of New York. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present. The Doorkeeper will close the doors, the Sergeant at Arms will notify absent Members, and the Clerk will call the roll.

The question was taken; and there were—yeas 308 nays 0 not voting 125, as follows:

[Omitted]



## Calendar No. 1153

88TH CONGRESS }  
2d Session }

SENATE }

REPORT  
No. 1219CLARIFYING AND PROTECTING THE RIGHT OF THE  
PUBLIC TO INFORMATION AND FOR OTHER PURPOSES

JULY 22, 1964.—Ordered to be printed

Mr. LONG of Missouri, from the Committee on the Judiciary, submitted  
the following

## R E P O R T

[To accompany S. 1666]

The Committee on the Judiciary, to which was referred the bill (S. 1666) to clarify and protect the right of the public to information, and for other purposes, having considered the same, reports favorably thereon, with amendments and recommends that the bill, as amended, do pass.

## AMENDMENTS

*Amendment No. 1.* On page 1, line 7, and page 2, line 1, delete "in the public interest" and insert in lieu thereof "for the protection of the national security".

*Amendment No. 2.* On page 2, line 3, after the word "Register" insert "for the guidance of the public" and delete this same phrase on lines 15 and 16 of page 2.

*Amendment No. 3.* On page 2, lines 4 and 5, delete "including delegations by the agency of authority".

*Amendment No. 4.* On page 2, line 6, after "which," insert "the officers from whom," and on line 7, change the first "or" to a comma and, after "requests" insert "or obtain decisions", and on page 2, line 11, after "available" insert "or the places at which forms may be obtained".

*Amendment No. 5.* On page 2, line 13, after "rules" insert "of general applicability"; and on page 2, line 15, after "interpretations" insert "of general applicability".

*Amendment No. 6.* On page 2, line 17, delete "No" and insert in lieu thereof "Except to the extent that he has actual notice of the terms thereof, no".

*Amendment No. 7.* On page 2, lines 19 and 20, delete "organization, procedure, or other rule, statement, or interpretation thereof" and insert in lieu thereof "matter".

*Amendment No. 8.* On page 2, line 21, delete "so", and before the period insert "therein or in a publication incorporated by reference in the Federal Register".

*Amendment No. 9.* On page 2, beginning on line 23 with "(1)" delete all through "practices of any agency" on line 3 of page 3 and insert in lieu thereof—

(1) is specifically required by Executive order to be kept secret for the protection of the national defense or foreign policy; (2) relates solely to the internal personnel rules and practices of any agency; or (3) is specifically exempted from disclosure by statute.

*Amendment No. 10.* On page 3, line 6, before "orders" insert "all"; on page 3, line 7, after "cases" insert a comma; on page 3, line 7, delete "all" and insert in lieu thereof "those"; on page 3, line 8, after "interpretations" insert "which have been"; on page 3, line 8, after "agency" insert a comma; on page 3, line 8, delete "and affecting" and insert in lieu thereof "affect"; and on page 3, line 9, after "public," insert "and are not required to be published in the Federal Register,".

*Amendment No. 11.* On page 3, lines 11 and 12, delete "protect the public interest" and insert in lieu thereof "prevent a clearly unwarranted invasion of personal privacy,"; on page 3, lines 13 and 14, delete "an opinion, order, rule, statement, or interpretation" and insert in lieu thereof "an opinion or order; and to the extent required to protect the public interest, an agency may delete identifying details when it makes available or publishes a rule, statement of policy, or interpretation"; and on page 3, line 14, delete "such cases" and insert in lieu thereof "any case".

*Amendment No. 12.* On page 3, line 17, delete "adequate" and insert in lieu thereof "identifying", and on page 3, line 19, after "interpretation" add "of general applicability".

*Amendment No. 13.* On page 3, lines 19 and 20, delete "No final order, opinion, rule, statement or policy, or interpretation" and insert in lieu thereof—

No final order or opinion may be cited as precedent, and no opinion, rule, statement of policy, or interpretation which is issued, adopted or promulgated after the effective date of this Act.

*Amendment No. 14.* On page 3, line 23, before the period insert "or unless prior to the commencement of the proceeding all private parties shall have actual notice of the terms thereof".

*Amendment No. 15.* On page 4, line 1, before "its" insert "all".

*Amendment No. 16.* On page 4, beginning with "(1)" on line 3, delete all through "matters." on line 8, and insert in lieu thereof—

(1) specifically required by Executive order to be kept secret for the protection of the national defense or foreign policy; (2) relates solely to the internal personnel rules and practices of any agency; (3) specifically exempted from disclosure by statute; (4) trade secrets and other information obtained from the public and customarily privileged or confidential; (5) intra-agency or interagency memorandums or letters dealing solely with matters of law or policy; (6) personnel files, medical files, and similar matter the disclosure

of which would constitute a clearly unwarranted invasion of personal privacy; (7) investigatory files until they are used in or affect an action or proceeding or a private party's effective participation therein; and (8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

*Amendment No. 17.* On page 4, line 8, delete "The" and insert in lieu thereof "Upon complaint, the" and on page 4, lines 11 and 12, delete "upon complaint".

*Amendment No. 18.* On page 4, line 12, before "to order" insert "to enjoin the agency from further withholding, and".

*Amendment No. 19.* On page 4, line 18, add the following:

In the event of noncompliance with the court's order, the district court may punish the responsible officers for contempt. Except as to those causes which the court deems of greater importance, proceedings before the district court as authorized by this subsection shall take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.

*Amendment No. 20.* On page 4, line 20, delete "individual" and insert in lieu thereof "final", and on page 4, line 22, after "defense" insert "or foreign policy".

*Amendment No. 21.* On page 5, line 4, after "Congress." add the following subsections:

(f) As used in this section, "Private party" means any party other than an agency.

(g) EFFECTIVE DATE.—This amendment shall become effective one year following the date of the enactment of this Act.

#### PURPOSE OF AMENDMENTS

*Amendment No. 1.* The change of standard from "in the public interest" to "for the protection of the national security" is made both to delimit more narrowly the exception and to give it a more precise definition. The phrase "public interest" in section 3(a) of the Administrative Procedure Act (and in S. 1666 as it was introduced) has been subject to conflicting interpretations, often colored by personal prejudices and predilections. It admits of no clear delineations, and it has served in many cases to defeat the very purpose for which it was intended—the public's right to know the operations of its Government. Rather than protecting the public's interest, it has caused widespread public dissatisfaction and confusion. Retention of such an exception in section 3(a) is, therefore, inconsistent with this section's general objective of enabling the public readily to gain access to the information necessary to deal effectively and upon equal footing with the Federal agencies.

*Amendment No. 2.* It is the purpose of this change to have the phrase "for the guidance of the public" changed from a limitation in subsection (C) to a descriptive phrase applicable to all matter being published in the Federal Register.

*Amendment No. 3.* Under the existing Administrative Procedure Act, publication of delegations of authority are limited to "delegations by the agency of final authority." As very little *final* authority is normally delegated, there have been very few publications by agencies of delegations of authority. In an attempt to correct this unforeseen weakness in the Administrative Procedure Act, the drafters of S. 1666 deleted the word "final." However, as has been pointed out in agency comments to the committee, inclusion in the Federal Register of *all* delegations would result in the publication of a mass of unwarranted and unwanted material in the Register, assuming that agencies could and would comply with the requirement. Therefore, it is believed that it would be preferable to return to the original Senate version of the Administrative Procedure Act which did not contain a specific provision with respect to delegations. It is believed that proper descriptions of central and field organizations should include a description of those delegations of authority which are of interest to the public.

*Amendment No. 4.* This change, which complements that made by amendment No. 3, is designed to spell out in more detail that information which it is necessary for the public to have if it is to be able to deal efficiently with its Government. The public should have information as to the officers from whom it can obtain decisions.

*Amendment No. 5.* In section 2 of the Administrative Procedure Act, rules are defined in such a way that there is no distinction between those of particular applicability (such as rates) and those of general applicability. It is believed that only rules, statements of policy, and interpretations of general applicability should be published in the Federal Register; those of particular applicability or legion in number and have no place in the Federal Register and are presently excepted but by more cumbersome language.

*Amendment No. 6.* The provision regarding actual notice has been added to insure that a person having actual notice is equally bound by a rule as a person having notice by publication of the matter in the Federal Register. Certainly actual notice should be equally as effective as constructive notice.

In their comments upon the bill, many agencies gave examples of rules and procedures of which interested parties would have actual notice before there was any opportunity to have the rules or procedures published in the Federal Register and thus given constructive notice. For example, the Forest Service might close a forest, forbid fishing in a certain stream, or take many similar actions simply by posting signs of the rule in conspicuous places. Any person reading the sign would be more effectively informed than by relying upon knowledge of the content of the Federal Register.

*Amendment No. 7.* This is a purely grammatical change. It is believed that "matter" covers "organization, procedure, or other rule, statement, or interpretation thereof."

*Amendment No. 8.* There are many agencies whose activities are thoroughly analyzed and publicized in professional or specialized services, such as Commerce Clearing House, West publications, etc. It would seem advantageous to avoid the repetition of much of this material in the Federal Register when it can be incorporated by reference and is readily available to interested members of the public. This is one way in which the Federal Register can be kept down to a manageable size.

However, the items listed in this subsection must be in the Federal Register to be enforceable, either by actual incorporation or incorporation by reference. For purposes of this subsection, the latter phrase is defined to include: (1) uniformity of indexing, (2) clarity that incorporation by reference is intended, (3) precision in description of the substitute publication, (4) availability of the incorporated material to the public, and, most important, (5) that private interests are protected by completeness, accuracy, and ease in handling.

In connection with this change, it is not intended that only a few persons having a special working knowledge of an agency's activities be aware of the location and scope of these materials. Any member of the public must be able to familiarize himself with the enumerated items in this subsection by the use of the Federal Register, or the statutory standards mentioned above will not have been met.

*Amendment No. 9.* This change involves the redrafting of the three exceptions which are to govern subsection (b) in order that the exceptions in the various subsections have some uniformity of order.

Exception No. 1 in subsections (a), (b), and (c) relate to "national security" or "national defense or foreign policy"; and exception No. 2 relates to "internal management" or "internal personnel rules and practices." It will be noted that there is a broader exemption in subsections (a), i.e., "national security," than in subsection (b), i.e., "specifically required by Executive order to be kept secret for the protection of the national defense or foreign policy." Also, it will be noted that subsections (b) and (c) have the additional exception, (3), covering matter which "is specifically exempted from disclosure by statute."

*Amendment No. 10.* These changes were made to define more precisely that matter which must be made available for public inspection and copying; it deletes the necessity to make available that material which is published in the Federal Register.

As the legislation is redrafted, there are three categories of agency material that are covered by the provisions of section (3b) providing for inspection and copying. These three are: (1) *all* final opinions, (2) *all* orders made in the adjudication of cases, (3) those rules, statements of policy, and interpretations which have been (a) adopted by the agency, (b) affect the public, and (c) are not required to be published in the Federal Register.

Thus (a), (b), and (c) apply only to the third category: rules, statements of policy, and interpretations.

The substantive reason for the amendment is to clarify whatever agency action is formally adopted by the agency, affects the public, and is not otherwise required to be published or made publicly available, is subject to section 3(b)'s provisions.

However, certain rules, interpretations, and statements of policy may not affect the public. For example, rules as to personnel's use of parking facilities or regulation of lunch hours, statements of policy as to sick leave, and the like may be adopted by the agency and not be required to be published in the Federal Register.

The term "affect the public" should be construed broadly to cover such materials as agency manuals issued to agency personnel which set forth procedures for determining entitlement to claims or benefits and the like.

*Amendment No. 11.* S. 1666 contains a provision to permit agencies to delete certain identifying details in opinions, orders, rules, state-

ments of policy, and interpretations. Agencies would be permitted to do so "to the extent required to protect the public's interest." It is believed that this is a proper standard for deletions of identifying details in the case of rules, statements of policy, or interpretations. However, such a standard is not readily applicable to or proper with respect to opinions and orders; it is believed that the correct standard here is "clearly unwarranted invasion of personal privacy." This change is interrelated to an additional exemption placed in subsection (c). (See amendment No. 16, *infra*.)

*Amendment No. 12.* This change substitutes the more specific term "identifying" for the vague term "adequate" as a modifier of "Index." This is, in fact, what the agencies' indexes should already do, i.e., identify the materials so that interested persons may easily find them. The criterion is that any competent practitioner who exercises diligence may familiarize himself with the materials through use of the index.

The words "of general applicability" were added for the same reasons they were added in amendment No. 5 (*supra*).

*Amendment No. 13.* This change makes the requirement of indexing prospective in application. It is necessary because some agencies have not kept any form of index, and will be overburdened with the task of indexing all their rules, statements, etc., retroactively.

*Amendment No. 14.* As with amendment No. 6, actual notice is considered at least the equal of constructive notice.

*Amendment No. 15.* The addition of the word "all" before "its records" is to make clear that there is not intended to be any silent limitations attached to the records which are to be made available to the public.

*Amendment No. 16.* By this amendment, the three exceptions in subsection (c) are renumbered, rephrased, and supplemented by four additional exceptions.

Exceptions Nos. 1, 2, and 3 are the same as in subsection (b).

Exception No. 4 is for "trade secrets and other information obtained from the public and customarily privileged or confidential." This exception is necessary to protect the confidentiality of information which is obtained by the Government through questionnaires or other inquiries, but which would customarily not be released to the public by the person from whom it was obtained. This would include business sales statistics, inventories, customer lists, and manufacturing processes. It would also include information customarily subject to the doctor-patient, lawyer-client, and other such privileges. To the extent that the information is not covered by this or the other exceptions, it would be available to public inspection, subject to the payment of lawfully prescribed fees to cover the expense of making the information available, such as bringing it from storage warehouses.

Exception No. 5 relates to "those parts of intra-agency or inter-agency memorandums or letters dealing solely with matters of law or policy." It was pointed out in the comments of many of the agencies that it would be impossible to have any frank discussion of legal or policy matters in writing if all such writings were to be subjected to public scrutiny. It was argued, and with merit, that efficiency

Government would be greatly hampered if, with respect to legal and policy matters, all Government agencies were forced to "operate in a fishbowl." The committee is convinced of the merits of this general proposition, but it has attempted to delimit the exception as narrowly as consistent with efficient Government operation. All *factual* material in Government records is to be made available to the public, as well as *final* agency determinations on legal and policy matters which affect the public.

Exception No. 6 relates to "clearly unwarranted invasion of personal privacy." In an effort to indicate the types of records which should not be generally available to the public, the bill lists personnel and medical files. Since it would be impossible to name all such files, the exception contains the wording "and similar records the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

The phrase "clearly unwarranted invasion of personal privacy" enunciates a policy that will involve a balancing of interests between the protection of an individual's private affairs from unnecessary public scrutiny, and the preservation of the public's right to governmental information. The application of this policy should lend itself particularly to those Government agencies where persons are forced to submit vast amounts of personal data usually for limited purposes. For example, health, welfare, and selective service records are highly personal to the person involved, yet facts concerning the award of a pension or benefit should be disclosed to the public.

Exception No. 7 deals with "investigatory files." As was the case with "trade secrets," it was originally thought that many agencies had statutory exemption for investigatory files. In fact, they do not; and there is a general consensus that such an exemption should be placed in this statute.

Exception No. 8 is directed specifically to insuring the security of our financial institutions by making available only to the Government agencies responsible for the regulation or supervision of such institutions the examination, operating, or condition reports prepared by, on behalf of, or for the use of such agencies.

*Amendment No. 17.* This amendment is purely grammatical.

*Amendment No. 18.* The provision for enjoining an agency from further withholding is placed in the statute to make clear that the district courts shall have this power.

*Amendment No. 19.* This is another addition which has been made to avoid any possible misunderstanding as to the courts' powers.

Further, this change would give precedence to actions for withholding. Without this, the remedy might be of little practical value.

*Amendment No. 20.* It was pointed out in the comments of the agencies that there might be considerable disadvantage of disclosure of preliminary votes by agency members. The committee agrees that this subsection should apply only to final votes.

*Amendment No. 21.* This remedies a discrepancy caused by use of the term "private party" in this act without being otherwise defined.

The 1-year period before this act goes into effect is to allow ample time for the agencies to conform their practices to the requirements of this act.

## PURPOSE OF BILL

In introducing the present bill, S. 1666, Senator Long quoted the words of Madison, who was chairman of the committee which drafted the first amendment:

Knowledge will forever govern ignorance, and a people who mean to be their own governors, must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy or perhaps both.

At no time in our history has this been truer than it is today, when the very vastness of our Government and its myriad of agencies makes it so difficult for the electorate to obtain that "popular information" of which Madison spoke. Only when one further considers that hundreds of departments, branches, and agencies are not directly responsible to the people, does one begin to understand the great importance of having an information policy of full disclosure.

Although the theory of an informed electorate is so vital to the proper operation of a democracy, there is nowhere in our present law a statute which affirmatively provides for a policy of disclosure. Many witnesses on S. 1666 testified that the present public information section of the Administrative Procedure Act has been used more as an excuse for withholding than as a disclosure statute.

Section 3 of the Administrative Procedure Act, that section which S. 1666 would amend, is full of loopholes which allow agencies to deny legitimate information to the public. It has been shown innumerable times that withheld information is often withheld only to cover up embarrassing mistakes or irregularities and justified by such phrases in section 3 of the Administrative Procedure Act as—"requiring secrecy in the public interest," "required for good cause to be held confidential," and "properly and directly concerned."

It is the purpose of the present bill (S. 1666) to eliminate such phrases, to establish a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language and to provide a court procedure by which citizens and the press may obtain information wrongfully withheld. It is important and necessary that the present void be filled. It is essential that agency personnel, and the courts as well, be given definitive guidelines in setting information policies. Standards such as "for good cause" are certainly not sufficient.

At the same time that a broad philosophy of "freedom of information" is enacted into law, it is necessary to protect certain equally important rights of privacy with respect to certain information in Government files, such as medical and personnel records. It is also necessary for the very operation of our Government to allow it to keep confidential certain material, such as the investigatory files of the Federal Bureau of Investigation.

It is not an easy task to balance the opposing interests, but it is not an impossible one either. It is not necessary to conclude that to protect one of the interests, the other must, of necessity, either be abrogated or substantially subordinated. Success lies in providing a workable formula which encompasses, balances, and protects all interests, yet places emphasis on the fullest responsible disclosure.



## HISTORY OF LEGISLATION

After it became apparent that section 3 of the Administrative Procedure Act was being used as an excuse for secrecy, proposals for change began.

The first of these proposals arose out of recommendations by the Hoover Commission Task Force, S. 2504, 84th Congress, introduced by Senator Wiley and S. 2541, 84th Congress, by Senator McCarthy. These were quickly followed by the Henning's bill, S. 2148, 85th, and by S. 4094, 85th, introduced by Senators Ervin and Butler, which was incorporated as a part of the proposed Code of Federal Administrative Procedure.

S. 4094 was reintroduced by Senator Hennings in the 86th Congress as S. 186. This was followed in the second session by a slightly revised version of the same bill, numbered S. 2780. Senators Ervin and Butler reintroduced S. 4094 which was now designated S. 1070, 86th Congress.

During the past Congress, Senator Carroll introduced S. 1567, co-sponsored by Senators Hart, Long, and Proxmire. Also introduced were the Ervin bill, S. 1887, its companion bill in the House, H.R. 9926, S. 1907 by Senator Proxmire, and S. 3410 introduced by Senators Dirksen and Carroll.

Although hearings were held on the Henning's bills, and considerable interest was aroused by all of the bills, no legislation resulted.

## INADEQUACY OF PRESENT LAW

The present section 3 of the Administrative Procedure Act, which would be replaced by S. 1666, is so brief that it can be profitably placed at this point in the report:

## PUBLIC INFORMATION

SEC. 3. Except to the extent that there is involved (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating solely to the internal management of an agency—

(a) RULES. Every agency shall separately state and currently publish in the Federal Register (1) descriptions of its central and field organization including delegations by the agency of final authority and the established places at which, and methods whereby, the public may secure information or make submittals or requests; (2) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal or informal procedures available as well as forms and instructions as to the scope and contents of all papers, reports, or examinations; and (3) substantive rules adopted as authorized by law and statements of general policy or interpretations formulated and adopted by the agency for the guidance of the public; but not rules addressed to and served upon named persons in accordance with law. No person shall in any manner be required to resort to organization or procedure not so published.

(b) **OPINIONS AND ORDERS.**—Every agency shall publish or, in accordance with published rule, make available to public inspection all final opinions or orders in the adjudication of cases (except those required for good cause to be held confidential and not cited as precedents) and all rules.

(c) **PUBLIC RECORDS.**—Save as otherwise required by statute, matters of official record shall in accordance with published rule be made available to persons properly and directly concerned except information held confidential for good cause found.

In retrospect, the serious deficiencies in this section are glaringly obvious. They fall into four categories:

(1) There is excepted from the operation of the whole section "any function of the United States requiring secrecy in the public interest \* \* \*." There is no attempt in the bill or its legislative history to delimit "in the public interest," and there is no authority granted for any review of interpretations of this phrase by Federal officials who wish to withhold information.

(2) Although subsection (b) requires the agency to make available to public inspection "all final opinions or orders in the adjudication of cases," it negates this command by adding the following limitation: "\* \* \* except those required for good cause to be held confidential \* \* \*."

(3) As to public records generally, subsection (c) requires their availability "to persons properly and directly concerned except information held confidential for good cause found." This is a double-barreled loophole because not only is there the vague phrase "for good cause found," there is also a further excuse for withholding if persons are not "properly and directly concerned."

(4) There is no remedy in case of wrongful withholding of information from citizens by Government officials.

**PRESENT SECTION 3 OF ADMINISTRATIVE PROCEDURE ACT IS WITHHOLDING STATUTE, NOT DISCLOSURE STATUTE**

It is the conclusion of the committee that the present section 3 of the Administrative Procedure Act is of little or no value to the public in gaining access to records of the Federal Government. Precisely the opposite has been true: it is cited as statutory authority for the withholding of virtually any piece of information that an official or an agency does not wish disclosed.

Under the present section 3, any Government official can under color of law withhold almost anything from any citizen under the vague standards—or, more precisely, lack of standards—in section 3. It would require almost no ingenuity for any official to think up a reason why a piece of information should not be withheld (1) as a matter of "public interest," (2) "for good cause found," or (3) that the person making the request is not "properly and directly concerned." And, even if his reason had not a scintilla of validity, there is absolutely nothing that a citizen seeking information can do because there is no remedy available

## WHAT S. 1666 WOULD DO

S. 1666 would emphasize that section 3 of the Administrative Procedure Act is not a withholding statute but a disclosure statute by the following major changes:

(1) It sets up workable standards for what records should and should not be open to public inspection. In particular, it avoids the use of such vague phrases as "good cause found" and replaces them with specific and limited types of information that may be withheld. It also provides a different set of standards in the three different subsections that deal with different types of information.

(2) It eliminates the test of *who* shall have the right to different information. For the great majority of different records, the public as a whole has a right to know what its Government is doing. There is, of course, a certain right to privacy and a need for confidentiality in some aspects of Government operations and these are protected as specifically as possible; but outside these limited areas, all citizens have a right to know.

(3) The revised section 3 gives to any aggrieved citizen a remedy in court.

## AGENCY COMMENTS TO S. 1666

The Government agencies in their comments, both oral and written, which are on file with the committee, pointed to a number of types of Government files which were not exempted from disclosure but which, they believe, should be exempted and which are covered by the amendments proposed herein. A fairly detailed description of the bill, as amended, follows:

## DESCRIPTION OF SUBSECTION (a)

Subsection (a) deals entirely with publication of material in the Federal Register. This subsection has fewer changes from the existing law than any other; primarily because there have been few complaints about omission from the Federal Register of necessary official material. In fact, what complaints there have been have been more on the side of *too much* publication rather than *too little*.

There are, however, some changes. The vague and objectionable standard of "public interest" has been replaced by "national security," so that, under the revised subsection, the requirement for publication would have only two exceptions:

- (1) any function of the United States requiring secrecy for the protection of the national security, or
- (2) any matter relating solely to the internal management of an agency \* \* \*.

There are a number of minor changes which attempt to make it more clear that the purpose of inclusion of material in the Federal Register is to guide the public in determining where and by whom decisions are made, as well as where they may secure information and make submittals and requests.

There is also a provision, suggested by a number of agencies, for incorporation of other publications by reference in the Federal Register. This may be helpful in reducing the bulky present size of the Register.

The new sanction imposed for failure to publish the matters enumerated in section 3(a) was added for several reasons. The old sanction was inadequate and unclear. The new sanction explicitly states that those matters required to be published and not so published shall be of no force or effect and cannot change or affect in any way a person's rights. This gives added incentive to the agencies to publish the required material.

The following technical changes were also made with regard to subsection 3(a).

The phrase "\* \* \* but not rules addressed to and served upon named persons in accordance with law \* \* \*" was stricken because section 3(a) as amended only requires the publication of rules of general applicability.

"Rules of procedure" was added to remove an uncertainty. "Descriptions of forms available" was added to eliminate the need of publishing lengthy forms.

The new subsection 3(a)(2)(D) is an obvious change, added for the sake of completeness and clarity.

#### DESCRIPTION OF SUBSECTION (b)

Subsection (b) of S. 1666 [as subsec. (b) of sec. 3 of the Administrative Procedure Act] deals with agency opinions, orders, and rules. This Administrative Procedure Act subsection is replaced by a detailed subsection, specifying what orders, opinions, and rules must be made available.

There are three categories of exceptions. The first two are similar to those in subsection (a), and relate to matter which (1) is specifically required by Executive order to be kept secret for the protection of the national defense or foreign policy; or (2) relates solely to the internal personnel rules and practices of any agency. It will be noted that these exemptions are similar to those in subsection (a), but more tightly drawn.

Exception No. 3 relates to matter which "is specifically exempted from disclosure by statute." This exception has been added to insure that S. 1666 is not interpreted to override specific statutory exemptions.

With the above three exceptions, agencies must make available for public inspection and copying all final opinions (including concurring and dissenting opinions); all orders made in the adjudication of cases; and those rules, statements of policy, and interpretations which have been adopted by the agency, which affect the public, and which are not required to be published in the Federal Register.

There is a provision for the deletion of certain details in orders and opinions to prevent "a clearly unwarranted invasion of personal privacy." The authority to delete identifying details after written justification is necessary in order to be able to balance the public's right to know with the private citizen's right to be secure in his personal affairs which have no bearing or effect on the general public. For example, it may be pertinent to know that unseasonably harsh weather has caused an increase in public relief costs; but it is not necessary that the identity of any person so affected be made public.

Requiring the agencies to keep a current index of their orders, opinions, etc., is necessary to afford the private citizen the essential information to enable him to deal effectively and knowledgeably

with the Federal agencies. This change will prevent a citizen from losing a controversy with an agency because of some obscure and hidden order or opinion, which the agency knows about, but which has been unavailable to the citizen simply because he had no way in which to discover it. However, considerations of time and expense cause this indexing requirement to be made prospective in application only.

Subsection (b) contains its own sanction that orders, opinions, rules, etc., which are not properly indexed and made available to the public may not be relied upon or cited as precedent by an agency.

There are also a number of technical changes in section 3(b):

The phrase "\* \* \* and copying \* \* \*" was added because it is frequently of little use to be able to inspect orders, rules, or the like unless one is able to copy them for future reference. Hence the right to copy these matters is supplemental to the right to inspect and makes the latter right meaningful.

The addition of "\* \* \* concurring and dissenting opinions \* \* \*" is added to insure that, if one or more agency members dissent or concur, the public as well as the parties should have access to these views and ideas.

The enumeration of orders, rules, etc., defines what materials are subject to section 3(b)'s requirements. The "unless" clause was added to provide the agencies with an alternative means of making these materials available through publication.

#### DESCRIPTION OF SUBSECTION (c)

Subsection (c) deals with "agency records" and would have almost the reverse result of present subsection (c) which deals with "public records." Whereas the present subsection 3(c) of the Administrative Procedure Act has been construed to authorize widespread withholding of information, subsection 3(c) of S. 1666 requires its disclosure except in certain enumerated categories. The first three of these exceptions are the same as those in subsection (b).

The fourth exception is for "trade secrets and other information obtained from the public and customarily privileged or confidential". This exception is necessary to protect the confidentiality of information which is obtained by the Government through questionnaires or other inquiries, but which would customarily not be released to the public by the person from whom it was obtained. This would include business sales statistics, inventories, customer lists and manufacturing processes. It would also include information customarily subject to the doctor-patient, lawyer-client, and other such privileges. To the extent that the information is not covered by this or the other exceptions, it would be available to public inspection, subject to the payment of lawfully prescribed fees to cover the expense of making the information available, such as bringing it from storage warehouses.

Exception No. 5 would exempt "intraagency or interagency memoranda or letters dealing solely with matters of law or policy." This exemption was made upon the strong urging of virtually every Government agency. It is their contention, and one that the committee believes has merit, that there are certain governmental processes relating to legal and policy matters which cannot be carried out efficiently if they must be carried out "in a goldfish bowl." Govern-

ment officials would be most hesitant to give their frank and conscientious opinion on legal and policy matters to their superiors and coworkers if they knew that, at any future date, their opinions of the moment would be spread on the public record. The committee is of the opinion that the Government cannot operate effectively or honestly under such circumstances. Exception No. 5 has been included to cover this situation, and it will be noted that there is no exemption for matters of a factual nature.

Exception No. 6 contains an exemption for "personnel files, medical files, and similar matter, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." As with "trade secrets," before the receipt of agency comments and before the hearings, there was a belief that there was specific statutory authority in most cases to cover such things as personnel files, medical files, etc. However, it was discovered that such agencies as the Veterans' Administration, Department of Health, Education, and Welfare, Selective Service, etc., had great quantities of files, the confidentiality of which was maintained by rule but without statutory authority. There is a general consensus that these "personnel files" should not be opened to the public, and the committee again decided upon a general exemption rather than a number of specific statutory authorizations for various agencies. It is believed that the scope of the exemption will be held within bounds by the use of the limitation of "a clearly unwarranted invasion of personal privacy."

Exception No. 7 is an exemption for "investigatory files until they are used in or affect an action or proceeding or a private party's effective participation therein." It was believed that most agencies had statutory authorization for withholding investigatory files. However, this proved to be incorrect, and even such agencies as the FBI did not possess such authority. The exemption covers investigatory files in general, but is limited in time of application.

Exception 8 is directed specifically to insuring the security of our financial institutions by making available only to the Government agencies responsible for the regulation or supervision of such institutions the examination, operating, or condition reports prepared by, on behalf of, or for the use of such agencies.

Subsection (c) contains a specific court remedy for any alleged wrongful withholding of agency records by agency personnel. The aggrieved person can bring an action in the district court where he resides, has his place of business, or in which the agency is situated. If the court finds that the information was wrongfully withheld, the court may require the agency to pay the cost and reasonable attorney's fees of the complainant. This power of the court to assess costs and reasonable attorney's fees is provided so that a private citizen or the press will be less prone to hesitate to use the remedy provided in section 3(c) because of financial inability or risk.

That the proceeding must be de novo is essential in order that the ultimate decision as to the propriety of the agency's action is made by the court and prevent it from becoming meaningless judicial sanctioning of agency discretion.

Placing the burden of proof upon the agency and requiring it to sustain its action by a preponderance of the evidence puts the task of justifying and withholding on the only party able to explain it. The private party can hardly be asked to prove that an agency has

improperly withheld public information, when he will not know the reasons for it.

The court is authorized to give actions under this subsection precedence on the docket over other causes. Complaints of wrongful withholding shall be heard "at the earliest practicable date and expedited in every way."

#### DESCRIPTION OF SUBSECTION (d)

This subsection provides that a record be kept of all final votes by agency members in every agency proceeding and that this record of votes be available to the public.

Agency practice in this area varies. This change makes the publication of final votes of agency members a uniform practice and provides the public with a very important part of the agency's decisional process.

The only exemptions are to "protect the national defense or foreign policy" of the United States.

#### DESCRIPTION OF SUBSECTION (e)

The purpose of this subsection is to make it clear beyond doubt that all *materials* of the Government are to be made available to the public by publication or otherwise unless explicitly allowed to be kept secret by one of the exceptions in section 3. Further, it is made clear that, because this section only refers to the public's right to know, it cannot, therefore, be backhandedly construed as authorizing the withholding of information from the Congress, the collective representative of the public.

#### CONCLUSION

The committee feels that this bill, as amended, would establish a much-needed policy of disclosure, while balancing the necessary interests of confidentiality.

A government by secrecy benefits no one.

It injures the people it seeks to serve; it injures its own integrity and operation.

It breeds mistrust, dampens the fervor of its citizens, and mocks their loyalty.

For these reasons, the committee reports the bill with the recommendation that it be adopted, as amended.

#### CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law (60 Stat. 237) made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

#### PUBLIC INFORMATION

SEC. 3. [Except to the extent there is involved (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating solely to the internal management of an agency—]

(a) **[RULES.—]** *PUBLICATION IN THE FEDERAL REGISTER.*—*Except to the extent that there is involved (1) any function of the United States requiring secrecy for the protection of the national security or (2) any matter relating solely to the internal management of an agency, every agency shall separately state and currently publish in the Federal Register for the guidance of the public [(1)] (A) descriptions of its central and field organization [including delegations by the agency of final authority] and the established places at which, the officers from whom, and methods whereby, the public may secure information, [or] make submittals or requests or obtain decisions; [(2)] (B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available [as well as], rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations; [and (3)] (C) substantive rules of general applicability adopted as authorized by law and statements of general policy or interpretations of general applicability formulated and adopted by the agency [for the guidance of the public, but not rules addressed to and served upon named persons in accordance with law.] and (D) every amendment, revision, or repeal of the foregoing. Except to the extent that he has actual notice of the terms thereof, no person shall in any manner be required to resort to, or be bound or adversely affected by any [organization or procedure] matter required to be published in the Federal Register and not [so] published therein or in a publication incorporated by reference in the Federal Register.*

(b) **AGENCY OPINIONS [AND], ORDERS, AND RULES.**—*Except to the extent that matter (1) is specifically required by Executive order to be kept secret for the protection of the national defense or foreign policy; (2) relates solely to the internal personnel rules and practices of any agency; or (3) is specifically exempted from disclosure by statute, every agency shall, [publish or] in accordance with published rules, make available [to] for public inspection and copying all final opinions [or] (including concurring and dissenting opinions) and all orders made in the adjudication of cases, [(except those required for good cause to be held confidential and not cited as precedents)] and [all] those rules, statements of policy, and interpretations which have been adopted by the agency, affect the public and are not required to be published in the Federal Register, unless such opinions, orders, rules, statements, and interpretations are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion or order; and to the extent required to protect the public interest, an agency may delete identifying details when it makes available or publishes a rule, statement of policy, or interpretation; however, in any case the justification for the deletion must be fully explained in writing. Every agency also shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to each final order, opinion, rule, statement of policy, and interpretation of general applicability. No final order or opinion may be cited as precedent, and no opinion, rule, statement of policy, or interpretation which is issued, adopted or promulgated after the effective date of this Act may be relied upon, used, or cited as precedent*



by any agency against any private party unless it has been indexed and either made available or published as provided in this subsection or unless prior to the commencement of the proceeding all private parties shall have actual notice of the terms thereof.

(c) **[PUBLIC] AGENCY RECORDS.**—**[Save as otherwise required by statute, matters of official record]** Every agency shall, in accordance with published rules stating the time, place, and procedure to be followed, **[be made]** make all its records promptly available to any person **[to persons properly and directly concerned except information held confidential for good cause found.]** except those particular records or parts thereof which are (1) specifically required by Executive order to be kept secret for the protection of the national defense or foreign policy; (2) relates solely to the internal personnel rules and practices of any agency; (3) specifically exempted from disclosure by statute; (4) trade secrets and other information obtained from the public and customarily privileged or confidential; (5) intra-agency or interagency memorandums or letters dealing solely with matters of law or policy; (6) personnel files, medical files, and similar matter the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; (7) investigatory files until they are used in or affect an action or proceeding or a private party's effective participation therein; and (8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions. Upon complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency is situated shall have jurisdiction to enjoin the agency from further withholding, and to order the production of any agency records or information improperly withheld from the complainant by the agency and to assess against the agency the cost and reasonable attorneys' fees of the complainant. In such cases the court shall determine the matter de novo and the burden shall be upon the agency to sustain its action by a preponderance of the evidence. In the event of noncompliance with the court's order, the district court may punish the responsible officers for contempt. Except as to those causes which the court deems of greater importance, proceedings before the district court as authorized by this subsection shall take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.

(d) **AGENCY PROCEEDINGS.**—Every agency having more than one member shall keep a record of the final votes of each member in every agency proceeding and except to the extent required to protect the national defense or foreign policy such record shall be available for public inspection.

(e) **LIMITATION OF EXEMPTION.**—Nothing in this section authorizes withholding of information or limiting the availability of records to the public except as specifically stated in this section, nor shall this section be authority to withhold information from Congress.

(f) As used in this section "Private party" means any party other than an agency.

(g) **EFFECTIVE DATE.**—This amendment shall become effective one year following the date of the enactment of this Act.

AMENDMENT OF ADMINISTRATIVE PROCEDURE ACT

Mr. MANSFIELD. Mr. President, with the concurrence of the distinguished minority leader, the Senator from Illinois [Mr. DIRKSEN], and the distinguished Senator from Missouri [Mr. LONG], I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 1153, Senate bill 1666.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (S. 1666) to amend section 3 of the Administrative Procedure Act, chapter 324, of the act of June 11, 1946 (60 Stat. 238), to clarify and protect the right of the public to information, and for other purposes.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with amendments, on page 1, line 7, after the word "secrecy", to strike out "in the public interest" and insert "for the protection of national security"; on page 2, line 3, after the word "Register", to insert "for the guidance of the public"; in line 4, after the word "organization", to strike out "including delegations by the agency of authority"; in line 6, after the word "which", to insert "the officers from whom,"; in line 7, after the word "secure", to strike out "information or" and insert "information"; in line 8, after the word "or", to strike out "requests;" and insert "requests, or obtain decisions;"; in line 12 after the word "forms", to strike out "available" and insert "available or the places at which forms may be obtained"; in line 15, after the word "rules", to insert "of general applicability"; in line 17, after the word "interpretations", to insert "of general applicability"; in line 18, after the word "agency", to strike out "for the guidance of the public"; in line 20, after the word "going", to strike out "No" and insert "Except to the extent that he has actual notice of the terms thereof, no"; at the beginning of line 23, to strike out "organization, procedure, or other rule, statement, or interpretation thereof" and insert "matter"; in line 25, after the word "not", to strike out "so published" and insert "published therein or in a publication incorporated by reference in the Federal Register.,"; on page 3, line 4, after the word "matter", to strike out "(1) is specifically exempted from disclosure by statute, or (2) involves any function of the United States requiring secrecy to protect the national defense and is specifically exempted from disclosure by Executive order or (3) relates solely to the internal employment rules and practices of any agency." and insert "(1) is specifically required by Executive order to be kept secret for the protection of the national defense or foreign policy; (2) relates solely to the internal personnel rules and practices of any agency; or (3) is specifically exempted from disclosure by statute.,"; in line 17, after the word "and", where it appears the first time, to insert "all"; in the same line, after the word "of", to strike out "cases" and insert "cases.,"; at the beginning of line 18, to strike out "all" and insert "those"; in the same line, after the word "interpretations", to insert "which have been"; in line 19, after the word "agency", to strike out "and affecting" and insert "affect"; at the beginning of line 20, to strike out "public," and insert "public and are not required to be published in the Federal Register.,"; in line 23, after the word "to", where it appears the second time, to strike out "protect the public interest" and insert "prevent a clearly unwarranted invasion of personal privacy.,"; on page 4, line 1, after the word "publishes", to strike out "an opinion, order, rule, statement, or interpretation;" and insert "an opinion or order; and to the extent required to protect the public interest, an agency may delete identifying details when it makes available or publishes a rule, statement of policy, or interpretation.,"; at the beginning of line 6, to strike out "such cases" and insert "any case"; in line 9, after the word "providing", to strike out "adequate" and insert "identifying"; in line 11, after the word "and", to strike out "interpretation." and insert "interpretation of general applicability.,"; in line 12, after the amendment just above

stated, to strike "No final order, opinion, rule, statement of policy, or interpretation" and insert "No final order or opinion may be cited as precedent, and no opinion, rule, statement of policy, or interpretation which is issued, adopted, or promulgated after the effective date of this Act"; in line 19, after the word "this", to strike out "subsection." and insert "subsection or unless prior to the commencement of the proceeding all private parties shall have actual notice of the terms thereof."; in line 24, after the word "make", to insert "all"; on page 5, line 1, after the word "able", to insert "to any person"; in line 2, after the word "are", to strike out "(1) specifically exempt from disclosure by statute; (2) specifically required by Executive order to be kept secret for the protection of the national defense; and (3) the internal memorandums of the members and employees of an agency relating to the consideration and disposition of adjudicatory and rulemaking matters."; after line 7, to insert: "(1) specifically required by Executive order to be kept secret for the protection of the national defense or foreign policy; (2) relates solely to the internal personnel rules and practices of any agency; (3) specifically exempted from disclosure by statute; (4) trade secrets and other information obtained from the public and customarily privileged or confidential; (5) intra-agency or interagency memorandums or letters dealing solely with matters of law or policy; (6) personnel files, medical files, and similar matter the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (7) investigatory files until they are used in or affect an action or proceeding or a private party's effective participation therein; and (8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions."

In line 23, after the amendment just above stated, to strike out "The" and insert "Upon complaint, the"; on page 6, line 3, after the word "jurisdiction", to strike out "upon complaint" and insert "to enjoin the agency from further withholding, and"; in line 10, after the word "evidence.", to insert "In the event of noncompliance with the court's order, the district court may punish the responsible officers for contempt. Except as to those causes which the court deems of greater importance, proceedings before the district court as authorized by this subsection shall take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way."; in line 19, after the word "the", to strike out "individual" and insert "final"; at the beginning of line 22, to insert "or foreign policy."; on page 7, line 5, after the word "from", to strike out "Congress." and insert "Congress."; after line 5, to insert:

"(f) PRIVATE PARTY.—As used in this section, "private party" means any party other than an agency."

And, after line 7, to insert:

"(g) EFFECTIVE DATE.—This amendment shall become effective one year following the date of the enactment of this Act."

So as to make the bill read:

*"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 3 of chapter 324 of the Act of June 11, 1946 (60 Stat. 238), is amended to read as follows:

"Sec. 3. (a) PUBLICATION IN THE FEDERAL REGISTER.—Except to the extent that there is involved (1) any function of the United States requiring secrecy for the protection of national security or (2) any matter relating solely to the internal management of an agency, every agency shall separately state and currently publish in the Federal Register for the guidance of the public (A) descriptions of its central and field organization and the established places at which, the officers from whom, and methods whereby, the public may secure information, make submittals or requests, or obtain decisions; (B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal or informal procedures available, rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations; (C) substantive rules of general applicability adopted as authorized by law and statements of general policy or interpretations of general applicability formulated and adopted by the agency and (D) every amendment, revision, or repeal of the foregoing. Except to the extent that he has actual notice of the terms thereof, no person shall in any manner be required to resort to, or be bound or adversely affected

by any matter required to be published in the Federal Register and not published therein or in a publication incorporated by reference in the Federal Register.

“(b) AGENCY OPINIONS, ORDERS, AND RULE.—Except to the extent that matter (1) is specifically required by Executive order to be kept secret for the protection of the national defense or foreign policy; (2) relates solely to the internal personnel rules and practices of any agency; or (3) is specifically exempted from disclosure by statute, every agency shall, in accordance with published rules, make available for public inspection and copying all final opinions (including concurring and dissenting opinions) and all orders made in the adjudication of cases, and those rules, statements of policy, and interpretations which have been adopted by the agency, affect the public and are not required to be published in the Federal Register, unless such opinions, orders, rules, statements, and interpretations are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion or order; and to the extent required to protect the public interest, an agency may delete identifying details when it makes available or publishes a rule, statement of policy, or interpretation; however, in any case the justification for the deletion must be fully explained in writing. Every agency also shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to each final order, opinion, rule, statement of policy, and interpretation of general applicability. No final order or opinion may be cited as precedent, and no opinion, rule, statement of policy, or interpretation which is issued, adopted, or promulgated after the effective date of this Act may be relied upon, used, or cited as precedent by an agency against any private party unless it has been indexed and either made available or published as provided in this subsection or unless prior to the commencement of the proceeding all private parties shall have actual notice of the terms thereof.

“AGENCY RECORDS.—Every agency shall, in accordance with published rules stating the time, place, and procedure to be followed, make all its records promptly available to any person except those particular records or parts thereof which are (1) specifically required by Executive order to be kept secret for the protection of the national defense or foreign policy; (2) relates solely to the internal personnel rules and practices of any agency; (3) specifically exempted from disclosure by statute; (4) trade secrets and other information obtained from the public and customarily privileged or confidential; (5) intra-agency or interagency memorandums or letters dealing solely with matters of law or policy; (6) personnel files, medical files, and similar matter the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (7) investigatory files until they are used in or affect an action or proceeding or a private party's effective participation therein; and (8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions. Upon complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency is situated shall have jurisdiction to enjoin the agency from further withholding, and to order the production of any agency records or information improperly withheld from the complainant by the agency and to assess against the agency the cost and reasonable attorney's fees of the complainant. In such cases the court shall determine the matter de novo and the burden shall be upon the agency to sustain its action by a preponderance of the evidence. In the event of noncompliance with the court's order, the district court may punish the responsible officers for contempt. Except as to those causes which the court deems of greater importance, proceedings before the district court as authorized by this subsection shall take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.

“(d) AGENCY PROCEEDINGS.—Every agency having more than one member shall keep a record of the final votes of each member in every agency proceeding and except to the extent required to protect the national defense or foreign policy, such record shall be available for public inspection.

“(e) LIMITATION OF EXEMPTION.—Nothing in this section authorizes withholding of information or limiting the availability of records to the public except as specifically stated in this section, nor shall this section be authority to withhold information from Congress.

"(f) PRIVATE PARTY.—As used in this section, 'private party' means any party other than an agency.

"(g) EFFECTIVE DATE.—This amendment shall become effective one year following the date of the enactment of this Act."

Mr. LONG of Missouri. Mr. President, I am gratified that the Senate is today considering this important piece of legislation. The bill's enactment is long overdue. In the words of Madison, who was the chairman of the committee which drafted the first amendment of our Constitution:

"Knowledge will forever govern ignorance, and a people who mean to be their own governors must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy or perhaps both."

At no time in our history has this been more true than it is today, when the vastness of our Government and its myriad of agencies makes it so difficult for the electorate to obtain that "popular information" of which Madison spoke. Only when one further considers that the hundreds of departments, branches, and agencies are not directly responsible to the people, does one begin to understand the great importance of having an information policy of full disclosure.

Although the theory of an informed electorate is so vital to the proper operation of a democracy, there is nowhere in our present law a statute which affirmatively provides for a policy of disclosure. Many witnesses on S. 1666 testified that the present public information section of the Administrative Procedure Act has been used more as an excuse for withholding than as a disclosure statute.

Section 3 of the Administrative Procedure Act, that section which S. 1666 would amend, is full of loopholes which allow agencies to deny legitimate information to the public. It has been shown innumerable times that withheld information is often withheld only to cover up embarrassing mistakes or irregularities.

This coverup must be stopped, and this bill takes a forward step in that direction.

A government by secrecy benefits no one. It injures the people it seeks to serve; it damages its own integrity and operation. It breeds distrust, dampens the fervor of its citizens and mocks their loyalty.

Therefore, Mr. President, I urge the Senate to pass this bill as reported by the Senate Judiciary Committee.

Mr. DIRKSEN. Mr. President, in the hearings which we have held and in the many discussions the committee has had, two things have become crystal clear.

The first is the Administrative Procedure Act which covers the conduct of the proceedings of the myriad of administrative agencies, those that are called independent as well as those that are housed within the departments in the executive branch, must be revised if these agencies are to cope with the ever-increasing workload and problems before them and the public is to be adequately informed about agency proceedings and the other actions of Government departments and agencies.

The second is that there is a wide disagreement on what reforms should be made. It seems that it all depends on whose ox is being gored.

The American Bar Association, the press, and the people of this country favor reforms which the Government departments and agencies seem to generally oppose. These departments and agencies have been invested by us in the Congress with certain functions and duties in the administration of programs we have authorized. They hand out grants or benefits or regulate segments of our economy or prosecute those who violate the law within their jurisdiction. And from that interest in the outcome there flows the result that the administrative agencies want one kind of a procedure and the members of the public who come before these agencies in some form of opposition or supplication or petition want another kind of procedure to be used in the presentation and decision of these matters.

I am afraid that that means the burden of devising the proper procedures falls upon us in the Congress who have established the administrative system. We must contrive the best possible procedures taking into account all the various viewpoints and this we have tried and are trying to do.

This legislation which we have before us now is of the greatest importance because fair and just administrative proceedings require, first of all, that the people know not only what the statutory law is, but what the administrative rules and regulations are, where to go, who to see, what is required and how they must present their matter. They must be informed in advance about the decisions which the administrative agencies and departments may use as precedent in determining their matter and whether these decisions were unanimous or di-

vided. And, they should have the same right to the inspection of the information which the government may use against them as they would have to inspect the information which some private party might use against them. In addition, section 3 of the Administrative Procedure Act has a broader purpose. It provides the means by which the people of this country can become informed and thus be able to scrutinize the activities and operation of their Government.

Mr. President, in these few words I have probably summed up the basic elements of section 3 of the Administrative Procedure Act as Congress intended it to be when it passed that bill just 2 years short of two decades ago. It was made crystal clear at that time in the report of the Judiciary Committee which said:

"The public information requirements of section 3 are in many ways among the most important, far-reaching, and useful provisions of the bill. For the information and protection of the public wherever located, these provisions require agencies to take the mystery out of administrative procedure by stating it.

The introductory clause states the only general exceptions. The first, which excepts matters requiring secrecy in the public interest, as necessary but is not to be construed to defeat the purpose of the remaining provisions. It would include confidential operations in any agency, such as some of the investigating or prosecuting functions of the Secret Service or the Federal Bureau of Investigation, but no other functions or operations in those or other agencies. Closely related is the second exception, of matters relating solely to internal agency management, which may not be construed to defeat other provisions of the bill or permit withholding of information as to operations which remaining provisions of this section or of the whole bill require to be public or publicly available."

With respect to subsection (a) the committee said:

"The subsection forbids secrecy of rules binding or applicable to the public, or delegations of authority."

Concerning the need for subsection (b) the committee said:

"Some agencies published sets of some of their decisions, but otherwise the public is not informed as to how and where they may see decisions or consult precedents."

The Judiciary Committee of the House, in a report submitted by the late Representative Walter, who was active in this field up to the day of his death, said:

"The public information provisions of section 3 are among the most useful provisions of the bill. The general public is entitled to know agency procedures and methods or to have the ready means of knowing with certainty. This section requires agencies to disclose their setups and procedures, to publish rules and interpretations intended as guides for the solution of cases, and to proceed in consistent accordance therewith until publicly changed."

In describing the bill on the floor of the House of Representatives, on May 24 of that same year, the late Francis Walter said:

"Public information requirements of section 3 are among the most important and useful provisions of the bill. Excepted are matters requiring secrecy in the public interest—such as certain operations of the Secret Service or FBI—and matters relating solely to the internal management of an agency."

And, with respect to the public records subsection he said:

"Section 3(c) also requires agencies to make matters of official record available to inspection except as by rule it may require them to be held confidential for legal cause."

Now what do we have today? Refusal on top of refusal of Government agencies and departments to make available to the public that information which affects the public. In overruling the contention of a Federal agency, a judge of the U.S. District Court said earlier this year:

"If the report of the experts employed by the Commission is accurate, then the public has a right to know these facts."

Just the other day I noted an article under a headline "Secrecy Is Criticized on Federal Projects." This charge was leveled by the chairman of the Arlington County Board who was reported as saying:

"It is always a secret, closed meeting when Federal projects are discussed. They don't make it public knowledge, so that when it is all ready the President can present a fait accompli."

That is fine for the President, he said, "but it certainly fouls up any planning we do for the area." So we have a situation where Federal Government agencies keep their plans for spending the peoples money secret, at taxpayers expense because the local governments cannot take these Federal plans into account in their own planning.

Then, Mr. President, we have another type of example which I consider even more significant because it must affect every citizen of this country, as an individual, at one time or another. The particular example which I am going to cite involves something as simple as crop acreage allotments. The work is performed by local committees under the direction of the Department of Agriculture. A little over a year ago I received a complaint from one of my constituents that he felt his corn acreage allotment had been unfairly reduced. He had asked the local committee why and they said they had information against him. He asked what that information was in order that he could meet it with his own evidence but they denied his request. Then he brought his complaint to me. I took the matter up with the Department of Agriculture, asking that an investigation be made of his complaint that he had never been shown the evidence against him. In due course I received a reply which said:

"Included in the records of this case are statements from farmers having knowledge of the history acreage of this farm which were obtained by the county committee of a confidential basis. For county committees to divulge the source of information received in confidence, when release of the information would impair the legitimate interest of persons supplying the information, would not in our opinion be proper and would result in less effective administration of programs at the local level."

I was not satisfied with this reply. It is a basic tenet of our law that if a man is accused, he is entitled to know the evidence against him and to confront his accusers. I, therefore, requested from the Department of Agriculture "the specific authority relied upon by the Department in connection with its position on this matter."

This time the answer came back from the head of the Department, Secretary Freeman. I want to read to you from that letter:

"This is in reply to your letter of July 17, 1962, requesting advice as to specific authority relied upon by the Department of Agriculture in withholding from a producer the names of persons supplying information adverse to him in connection with his participation in the feed grain program.

"Department regulations governing the availability of information from records comply with the requirements of section 3 of the Administrative Procedure Act, 5 U.S.C. 1002. Such section provides as follows:

"SECTION 3. Except to the extent that there is involved (1) any function of the United States requiring secrecy in the public interest, or (2) any matter relating solely to the internal management of the agency.

"(c) PUBLIC RECORD.—Save as otherwise required by statute, matters of official record shall in accordance with published rule be made available to persons properly and directly concerned except information held confidential for good cause found."

"536(b) [of the Department's regulation] constitutes a statement of those matters considered to be confidential."

Thus, the Department of Agriculture is saying that the evidence against any farmer in this country can be withheld from him because it is "information held confidential held for good cause found." No wonder there is such interest in revising the Administrative Procedure Act as we have in this bill, to protect against such departmental and agency abuse.

Mr. President, this bill to revise section 3 of the Administrative Procedure Act is one step along the way of our difficult journey through the labyrinth of administrative procedure. It takes some of the twists and turns and some of the blind alleys out of those procedures. It will permit the people of this country to move with greater understanding and knowledge along a less tortuous path in their dealings with the Government. This is an essential step unless we wish to perpetuate the wall which the zealous Government servants have built around their actions—a wall which divides the people from their Government and which should be torn down.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 1219), explaining the purposes of the bill.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

"Section 3 of the Administrative Procedure Act, that section which S. 1666 would amend, is full of loopholes which allow agencies to deny legitimate information to the public. It has been shown innumerable times that withheld information is often withheld only to cover up embarrassing mistakes or irregularities and justified by such phrases in section 3 of the Administrative Pro-

cedure Act, as—'requiring secrecy in the public interest,' 'required for good cause to be held confidential,' and 'properly and directly concerned.'

"It is the purpose of the present bill (S. 1666) to eliminate such phrases, to establish a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language and to provide a court procedure by which citizens and the press may obtain information wrongfully withheld. It is important and necessary that the present void be filled. It is essential that agency personnel, and the courts as well, be given definitive guidelines in setting information policies. Standards such as 'for good cause' are certainly not sufficient.

"At the same time that a broad philosophy of 'freedom of information' is enacted into law, it is necessary to protect certain equally important rights of privacy with respect to certain information in Government files, such as medical and personnel records. It is also necessary for the very operation of our Government to allow it to keep confidential certain material, such as the investigatory files of the Federal Bureau of Investigation.

"It is not an easy task to balance the opposing interests, but it is not an impossible one either. It is not necessary to conclude that to protect one of the interests, the other must, of necessity, either be abrogated or substantially subordinated. Success lies in providing a workable formula which encompasses, balances, and protects all interests, yet places emphasis on the fullest responsible disclosure."

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the committee amendments be considered en bloc.

The ACTING PRESIDENT pro tempore. Without objection, the committee amendments will be considered en bloc. Without objection, the amendments are agreed to.

The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

#### AMENDMENT OF SECTION 3 OF ADMINISTRATIVE PROCEDURE ACT OF 1946

Mr. HUMPHREY. Mr. President, I ask unanimous consent that the Senate proceed to reconsider Senate bill 1666, and that the Senate reconsider the votes by which the bill was ordered to be engrossed for a third reading, and was read the third time, and passed.

Mr. KUCHEL. Mr. President, reserving the right to object, has this matter been cleared?

Mr. HUMPHREY. Yes, it has been cleared, I assure the Senator.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (S. 1666) to amend section 3 of the Administrative Procedure Act, chapter 324, of the act of June 11, 1946 (60 Stat. 238), to clarify and protect the right of the public to information, and for other purposes.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request to reconsider the engrossment, third reading, and passage of the bill?

The Chair hears no objection.

The bill is before the Senate.

Mr. HUMPHREY. Mr. President, on Tuesday, July 28, 1964, the Senate passed without debate S. 1666, amendments to section 3 of the Administrative Procedure Act of 1946 (60 Stat. 238). I entered subsequently a motion of reconsideration of S. 1666, and the bill returned to the calendar.

I want to make it crystal clear to every Senator that I am not opposed to S. 1666. It deals with the vital subject of access of information in Federal agencies and every Senator knows that certain agencies through the years have abused in a most flagrant manner the legitimate right to withhold certain privileged or confidential information. The time for a thorough revision of the statutes dealing with governmental disclosure of information is long overdue.

I did, however, believe that an opportunity should be afforded for some debate and discussion on this important bill. For this reason, and for this reason alone, I entered a motion of reconsideration.

The Senator from Minnesota is not a lawyer and not a member of the Judiciary Committee. The distinguished Senator from Missouri [Mr. LONG] conducted hearings in October 1963, and again last week on this legislation. The committee approved 21 amendments to the original text of S. 1666; it is my understanding that these amendments removed a number of problems which



had arisen in relation to the original bill. I commend the distinguished and able Senator from Missouri [Mr. Long] for his diligent labor to produce a fair and balanced bill.

There have been brought to my attention several areas where additional clarification would be helpful. I have prepared certain amendments which would, in my opinion, assist in clarifying these sections. It may, however, be possible to accomplish the objective of removing these potential ambiguities or uncertainties through a more complete exposition of the committee's intention without actually having to amend S. 1666.

I would, therefore, like to discuss these possible amendments with the distinguished Senator from Missouri, seek his advice and counsel for their desirability, and achieve whatever clarification he deems to be necessary.

Let me read through these proposals in their entirety.

First. On page 4, lines 19-20, strike the words "prior to the commencement of the proceedings".

Since agencies often group cases for hearing and decision, it should not be necessary to index one of them before the others can be decided.

Second. On page 5, lines 12-14, amend clause (4) of section 3(c) to read as follows:

"(4) trade secrets and information obtained from the public in confidence or customarily privileged or confidential."

The existing clause (4) of the revised section 3(c) which purports to exempt from disclosure information obtained from the public which is "customarily privileged or confidential" would not appear to exempt wage data submitted to the Bureau of Labor Statistics, and the Wage and Hour Division of the U.S. Department of Labor in confidence and used by them in preparing and publishing wage studies and surveys. This situation should be remedied because these wage studies and surveys are used by the Department as a basis for prevailing wage determinations which the Department is required to make. Unless the Bureau of Labor Statistics can continue to assure those from whom wage data are obtained that these data will be kept confidential, the Bureau's sources of information in these vital fields could be seriously jeopardized. As presently drafted, clause (4) might interfere with the effective enforcement of the Fair Labor Standards Act, the Labor-Management Reporting and Disclosure Act, and the Welfare and Pension Plans Disclosure Act.

Third. On page 5, lines 14-15, amend clause (5) of section 3(c) to read as follows:

"(5) intra-agency or interagency memorandums or letters dealing with matters of fact, law or policy."

As presently written clause (5) of the amended section 3(c) appears not to exempt intra-agency or interagency memorandums or letters dealing with matters of fact. For example, clause (5) would apparently not exempt memorandums prepared by agency employees for themselves or their superiors purporting to give their evaluation of the credibility of evidence obtained from witnesses or other sources. The knowledge that their views might be made public information would interfere with the freedom of judgment of agency employees and color their views accordingly. Memorandums summarizing facts used as a basis for recommendations for agency action would likewise appear to be excluded from the exemption contained in clause (5).

Fourth. On page 5, lines 18 to 20, amend clause (7) of section 3(c) to read as follows:

(7) investigatory files.

On page 5, beginning on line 18, insert a new clause (8), as follows, and renumber the present clause (8) as clause (9);

(8) statements of agency witnesses until such witnesses are called to testify in an action or proceeding and request is timely made by a private party for the production of relevant parts of such statements for purposes of cross examination.

Clause (7) of the amended section (3) would appear to open up investigatory files to an extent that goes beyond anything required by the courts, including the decision of the Supreme Court in the Jencks case. This clause, for example, which provides for disclosure of investigatory files as soon as they "affect an action or proceeding or a private party's effective participation therein" is susceptible to the interpretation that once a complaint of unfair labor practice is filed by the General Counsel of the NLRB, access could be had to the statements of all witnesses, whether or not these statements are relied upon to support the complaint.

Witnesses would be loath to give statements if they knew that their statements were going to be made known to the parties before the hearing. While witnesses would continue to be protected in testifying at the hearing, they would enjoy no protection prior to that time. Substantial litigation would be required before the full scope and effects of clause (7) would be clear.

A pending draft report of the ABA Committee on Board Practice and Procedure states that:

In the consideration of section 102.118 of the Board's rules by last year's Committee on Board Practice and Procedure there was considerable opposition to any rule which would permit a party to engage in a fishing expedition into the Board's investigation files. It was felt that the opening of the Board's files to inspection would seriously handicap the Board in the investigation of charges.

The committee concluded that the Board's investigatory files should be exempt from disclosure. The Board would, of course, like all other administrative agencies of the Government, continue to be governed by the rules laid down by the U.S. Supreme Court in the Jencks case.

Mr. President, I have cited these proposals and I would welcome comment from the able chairman of the committee.

Mr. Long of Missouri. Mr. President, I thank the distinguished majority whip for bringing these matters to the attention of the Senate. I think it is very helpful to have discussions of these matters before the bill is finally passed and sent to the House.

I have listened with great interest to the suggestions made by the Senior Senator from Minnesota and would like to comment on them one by one.

First, there is a suggestion with respect to an amendment to section 3(b), eliminating the words "prior to the commencement of the proceeding." These words were added to protect private parties from being surprised in a proceeding of which they could have had no knowledge. Therefore, I believe they should be retained in the section.

The next suggestion relates to the exemption in section 3(c), relating to "trade secrets and other information obtained from the public and customarily privileged or confidential." This language in itself is quite broad and I believe would certainly cover such material as "wage data submitted to the Bureau of Labor Statistics" as mentioned by the senior Senator from Minnesota. The suggestion that we add the words "in confidence" to the phrase "information obtained from the public" might result in certain agencies taking much information from the public "in confidence" in the future that has not customarily been considered confidential or privileged. This is something which we should seek to avoid and I believe that the language in the present exemption number (4) is sufficiently broad.

The suggestion with respect to exception (5), adding "matters of fact" to "matters of law or policy" would result in a great lessening of information available to the public and to the press. Furthermore, the example cited with respect to intra-agency memorandums giving evidence of the credibility of evidence obtained from witnesses or other sources, leads me to point out that there is nothing in this bill which would override normal privileges dealing with the work product and other memorandums summarizing facts used as a basis for recommendations for agency action if those facts were otherwise available to the public.

The last two suggestions relate to investigatory files and an inclusion in the bill of the substance of the Jencks rule. I believe that this is a valuable suggestion but I would suggest as a substitute for the Senator's proposals that we combine them and restate exception (7) as a new proposal which would read as follows: "investigatory files compiled for law enforcement purposes except to the extent they are by law available to a private party."

If this language is agreeable to the Senator from Minnesota, I hereby move that the bill is amended accordingly.

Mr. HUMPHREY. In other words, one amendment can take care of the situation.

Mr. LONG of Missouri. Yes; one amendment.

Mr. HUMPHREY. I would be very appreciative if the Senator would do that.

Mr. LONG of Missouri. The amendment is at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The LEGISLATIVE CLERK. On page 5, at lines 18 to 20, it is proposed to amend clause (7) to read as follows: "investigatory files compiled for law enforcement purposes except to the extent they are by law available to a private party."

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Missouri.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is before the Senate and open to further amendment.

Mr. HUMPHREY. I thank the Senator from Missouri for his great courtesy and his patience in this matter. I deeply regret that I found it necessary to move to reconsider the vote by which the bill had been passed. I told the Senator privately, and I now tell him publicly, that this is a very complex piece of legislation, and he has devoted hours of work to it. He is to be highly commended for his diligence and careful attention to this very important subject. We all wish to have governmental information made available; and proper public access to information, I am sure, is one of the real objectives of a free society. We must seek to strike a workable balance in this controversial area. I know that the House will wish to examine into this proposed legislation with the same diligence that the Senator and his subcommittee have given to this bill. This is a most difficult area in which to legislate and I know the House committee will examine these proposals with care and objectivity.

Mr. LONG of Missouri. I thank the distinguished Senator from Minnesota for his help. I am grateful to him. I am sure the committee is very appreciative of his help and his courtesy and interest in this matter. He has been very helpful.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is one the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (S. 1666) was passed, as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 3 of chapter 324 of the Act of June 11, 1946 (60 Stat. 233), is amended to read as follows:

"SEC. 3. (a) PUBLICATION IN THE FEDERAL REGISTER.—Except to the extent that there is involved (1) any function of the United States requiring secrecy for the protection of national security or (2) any matter relating solely to the internal management of an agency, every agency shall separately state and currently publish in the Federal Register for the guidance of the public (A) descriptions of its central and field organization and the established places at which, the officers from whom, and methods whereby, the public may secure information, make submittals or requests, or obtain decisions; (B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal or informal procedures available, rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations; (C) substantive rules of general applicability adopted as authorized by law and statements of general policy or interpretations of general applicability formulated and adopted by the agency and (D) every amendment, revision, or repeal of the foregoing. Except to the extent that he has actual notice of the terms thereof, no person shall in any manner be required to resort to, or be bound or adversely affected by any matter required to be published in the Federal Register and not published therein or in a publication incorporated by reference in the Federal Register.

"(b) AGENCY OPINIONS, ORDERS, AND RULES.—Except to the extent that matter (1) is specifically required by Executive order to be kept secret for the protection of the national defense or foreign policy; (2) relates solely to the internal personnel rules and practices of any agency; or (3) is specifically exempted from disclosure by statute, every agency shall, in accordance with published rules, make available for public inspection and copying all final opinions (including concurring and dissenting opinions) and all orders made in the adjudication of cases, and those rules, statements of policy, and interpretations which have been adopted by the agency, affect the public and are not required to be published in the Federal Register, unless such opinions, orders, rules, statements, and interpretations are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion or order; and to the extent required to protect the public interest, an

agency may delete identifying details when it makes available or publishes a rule, statement of policy, or interpretation; however, in any case the justification for the deletion must be fully explained in writing. Every agency also shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to each final order, opinion, rule, statement of policy, and interpretation of general applicability. No final order or opinion may be cited as precedent, and no opinion, rule, statement of policy, or interpretation which is issued, adopted, or promulgated after the effective date of this Act may be relied upon, used, or cited as precedent by an agency against any private party unless it has been indexed and either made available or published as provided in this subsection or unless prior to the commencement of the proceeding all private parties shall have actual notice of the terms thereof.

“(c) AGENCY RECORDS.—Every agency shall, in accordance with published rules stating the time, place, and procedure to be followed, make all its records promptly available to any person except those particular records or parts thereof which are (1) specifically required by Executive order to be kept secret for the protection of the national defense or foreign policy; (2) relates solely to the internal personnel rules and practices of any agency; (3) specifically exempted from disclosure by statute; (4) trade secrets and other information obtained from the public and customarily privileged or confidential; (5) intra-agency or interagency memorandums or letters dealing solely with matters of law or policy; (6) personnel files, medical files, and similar matter the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (7) investigatory files compiled for law enforcement purposes except to the extent they are by law available to a private party; and (8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions. Upon complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency is situated shall have jurisdiction to enjoin the agency from further withholding, and to order the production of any agency records or information improperly withheld from the complainant by the agency and to assess against the agency the cost and reasonable attorneys’ fees of the complainant. In such cases the court shall determine the matter *de novo* and the burden shall be upon the agency to sustain its action by a preponderance of the evidence. In the event of noncompliance with the court’s order, the district court may punish the responsible officers for contempt. Except as to those causes which the court deems of greater importance, proceedings before the district court as authorized by this subsection shall take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.

“(d) AGENCY PROCEEDINGS.—Every agency having more than one member shall keep a record of the final votes of each member in every agency proceeding and except to the extent required to protect the national defense or foreign policy, such record shall be available for public inspection.

“(e) LIMITATION OF EXEMPTION.—Nothing in this section authorizes withholding of information or limiting the availability of records to the public except as specifically stated in this section, nor shall this section be authority to withhold information from Congress.

“(f) PRIVATE PARTY.—As used in this section, ‘private party’ means any party other than an agency.

“(g) EFFECTIVE DATE.—This amendment shall become effective one year following the date of the enactment of this Act.”

Mr. LONG of Missouri. Mr. President, I move that the Senate reconsider the vote by which the bill was passed.

Mr. HUMPHREY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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#### Revised Statutes, Title IV, Executive Departments, Sec. 161

SEC. 161. The head of each Department is authorized to prescribe regulations, not inconsistent with law, for the government of his Department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it.

## Public Law 85-619, Amending Sec. 161 of the Revised Statutes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 161 of the Revised Statutes of the United States (5 U.S.C. 22) is amended by adding at the end thereof the following new sentence: "This section does not authorize withholding information from the public or limiting the availability of records to the public."  
Approved August 12, 1958.

Administration Procedure Act Sec. 3, P.L. 404, Ch. 324, 79th Cong., 2d Sess.

## PUBLIC INFORMATION

SEC. 3. Except to the extent that there is involved (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating solely to the internal management of an agency—

(a) **RULES.**—Every agency shall separately state and currently publish in the Federal Register (1) descriptions of its central and field organization including delegations by the agency of final authority and the established places at which, and methods whereby, the public may secure information or make submittals or requests; (2) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal or informal procedures available as well as forms and instructions as to the scope and contents of all papers, reports, or examinations; and (3) substantive rules adopted as authorized by law and statements of general policy or interpretations formulated and adopted by the agency for the guidance of the public, but not rules addressed to and served upon named persons in accordance with law. No person shall in any manner be required to resort to organization or procedure not so published.

(b) **OPINIONS AND ORDERS.**—Every agency shall publish or, in accordance with published rule, make available to public inspection all final opinions or orders in the adjudication of cases (except those required for good cause to be held confidential and not cited as precedents) and all rules.

(c) **PUBLIC RECORDS.**—Save as otherwise required by statute, matters of official record shall in accordance with published rule be made available to persons properly and directly concerned except information held confidential for good cause found.