

bers of the House appointed by the Speaker of the House, and four members appointed by the President.

Section 4(b) of the bill states: "The Commission is authorized to secure from any department, agency, or independent instrumentality of the executive branch of the Government any information it deems necessary to carry out its functions under this Act; and each such department, agency, and instrumentality is authorized and directed to furnish such information to the Commission, upon request made by the Chairman or the Vice Chairman when acting as Chairman."

The Department of the Navy, in its report on the bill to Chairman James E. Murray of the Senate Committee on Interior and Insular Affairs, requested a revision of the information section. In a letter dated May 31, 1960, and signed by Rear Adm. John S. McCain, Jr., Chief of Legislative Affairs, U.S. Navy, Admiral McCain stated:

"The Department of the Navy, on behalf of the Department of Defense, interposes no objection to the enactment of S. 2839.

"It is recommended, however, that section 4(b) of the bill be revised to avoid a constitutional question concerning the authority of the executive branch to withhold information when its disclosure would not be in the public interest. The following language has been recommended by the Department of Justice for situations such as this:

"The Commission is authorized to request from any department, agency, or independent instrumentality of the Government any information it deems necessary to carry out its functions under this Act; and each such department, agency, and instrumentality is authorized to cooperate with the Commission and, to the extent permitted by law, to furnish such information to the Commission, upon request made by the Chairman or by the Vice Chairman when acting as Chairman."

"This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense."

It appears to me that enactment of such a provision would do violence to the congressional right to know. Although the provision in this instance applies only to a proposed special commission, its enactment might be claimed as congressional sanction to the executive's claim of a virtually unlimited right to withhold information from the legislative branch.

It is my understanding that Congress is entitled to all information which it deems necessary from the executive branch unless there is clear legal authority for withholding. Under the provision requested by the Navy, Congress would be entitled to information only if the availability of that information was "permitted" by law. In other words, instead of reserving the authority to withhold information which is required by law to be withheld, it appears that the Navy is seeking to reserve the right to withhold any information unless the law positively requires its availability.

From the work of your subcommittee and that of the House Government Information Subcommittee, I believe it is obvious that this is a most important and fundamental distinction. The Navy's proposed language was recommended by the Department of Justice and therefore apparently represents administrative policy.