

require this information, to come in now and direct the manner or the rules which would govern the use of this information?

Mr. SCHLEI. I think, Mr. Chairman, that there is no question that there is a legislative power to regulate the handling and the availability of that information. But I would also take the position that there is a residual constitutional authority in the President and the heads of the executive departments in particular situations to assert executive privilege.

Mr. MOSS. All right. Can the Executive require the public to supply information under penalty of law if they fail to give it correctly?

Mr. SCHLEI. No, sir. Not without some legislative authority, not that I know of.

Mr. MOSS. In other words, the executive, then, becomes the custodian of the information which develops as a result of the requirement by law——

Mr. SCHLEI. Yes, sir.

Mr. MOSS (continuing). Written by the Congress?

Mr. SCHLEI. Yes, sir.

Mr. MOSS. And he does not have an inherent authority, then, to require that this information be supplied by the public?

Mr. SCHLEI. No, sir; he does not that I know of.

Mr. MOSS. None at all? Well, then, I want to express the same disappointment expressed by my colleague Mr. Griffin that we would be faced here with a rejection, a blanket rejection, of any possible amendment to law affecting records held by the Government and the right and sometimes the need of the public to have orderly access to them.

Mr. SCHLEI. Well, I——

Mr. MOSS. I think it would have been far more constructive had the Department of Justice broken this down and dealt with the areas where they felt Congress could properly direct the method of use or disposal and those areas where they felt there was a strong privilege vested in the Executive.

Now, we are not trying to reach executive privilege. I do not know what it is. It has been variously stated by various Presidents. Some have claimed that you could delegate it down to the lowest echelon of the career service and that they could act with all the power of the President. And others have said that only the President can order, in each and every instance, withholding of information.

Now, I do not know where it is. And the Justice Department does not know where it is.

Mr. SCHLEI. Well, I can tell you, Mr. Chairman, that in this administration the President has made it clear that he is going to exercise the right of personal approval of each proposed instance——

Mr. MOSS. All right.

Mr. SCHLEI (continuing). Although I do not think he takes the position that as a matter of law he is obliged to do that, but he thinks that he should do that, and he has indicated that he will.

Mr. MOSS. All right; fine. Now, we are not trying to get at that instance where the President is going to claim executive privilege, because, as a matter of practical fact, we cannot, can we?

Mr. SCHLEI. I guess not, sir.