

A terribly important category, it seems to me, is interagency communications relative to prospective litigation. Communications of that kind would be protected only to the extent that they might deal "solely with matters of law or policy," which is exception No. 5,

The Lands Division, for example, might have no right to withhold the very large number of letter and reports it receives or sends to other Federal agencies relative to the protection of public lands.

Reports and analyses prepared by attorneys of the Lands Division or other agencies which ordinarily are protected in litigation by the attorney's work product privilege, with which I am sure the committee is familiar, might be made available under the provisions of the bill.

And a third, perhaps a fourth I am up to now, category is communications relating to efforts to compromise or settle disputes. Instructions to negotiators, for example, might be withheld only to the extent that they relate solely to matters of law or policy.

Letters to private parties would be freely available to the public. Communications from private parties might be confidential only to the extent that they are matters which are trade secrets or commercial or financial information and privileged or confidential.

Mr. MOSS. Now, much of your commercial and financial information is protected under existing statute, is it not?

Mr. SCHLEI. Well, what we have in our files, I do not know that it is, Mr. Chairman. I do not think it is. I think it is dependent on the general executive prerogative.

Mr. MOSS. How carefully have you checked the some 78 statutes which confer authority for withholding of information?

Mr. SCHLEI. Well, I have not checked them carefully myself, Mr. Chairman. I have with me Mr. Maxson, who is the Director of the Office of Administrative Procedure, a constituent part of my Office, the Office of Legal Counsel. And I think he is rather thoroughly familiar with those statutes.

I am to a large extent relying on his work in giving you these specific categories of information which seem to us to create trouble, problems, under the language of the statute as it now is.

Mr. MOSS. Back in the 86th Congress, we published a document entitled "Federal Statutes on the Availability of Information." It is a very comprehensive document.

Mr. SCHLEI. Well, would that protect communications anticipating litigation or correspondence about the settlement of disputes, Mr. Chairman? I really am virtually certain that there is no statute that has any bearing at all on that problem, and that if this statute were enacted we would be unable to withhold a good bit of that information as to which it is absolutely crucial that it remain away from the public.

Mr. RUMSFELD. Mr. Chairman, could I ask a question on this point?

Mr. MOSS. Mr. Rumsfeld.

Mr. RUMSFELD. Where would this type of information fall? Say that under antitrust legislation passed by the Congress the Justice Department investigates the possibility of a suit against some electrical contractors and at some point they completely drop these proceedings, discontinue the investigation, decide not to proceed, or to take it to court. Is that information the type of information you would want protected after it had been dropped?