

ing information available to the public and that the existing provisions of the Administrative Procedure Act on publication of information constitute about as good a standard as can be devised for this purpose. It is for this reason, and because after earnest study we find that H.R. 5012 and the related bills would be seriously prejudicial to the effective conduct of the Government and damaging to many private individuals, that we have felt compelled to report to your subcommittee that we are opposed to their enactment. We believe that we can demonstrate to the subcommittee that if legislation is passed which requires all Government records, with a few noted exceptions, to be made available to any person, 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 the privacy of individuals whose records have become Government records.

I would like to develop this under four headings, the first of which relates to the requirement that disclosure be made to persons who do not have a legitimate interest in a matter; (2) the inadequacies of the exemptions; (3) the inappropriateness of the court provisions; and (4) the doubtful constitutionality of the legislation.

(1) Requirement that disclosure be made to persons who do not have a legitimate interest in the matter.

A statute which requires that records be made available to "any person" must be tested quite literally by considering who "any person" might be. Prof. Kenneth Culp Davis, author of the authoritative text, "Administrative Law Treatise," dramatized this point to the Senate Subcommittee on Administrative Practice and Procedure when it was considering similar legislation last summer by citing as an example of what would be possible under a provision such as that contained in this bill, that high school children playing games would be enabled to require all of the White House records to be made available to them, minus those in the exceptions. Another example he cited was the possibility of a deranged person requiring the records of the Justice Department concerning judicial appointments. While these are possibly extreme examples, it is not hard to point to other types of persons who could, and in large numbers undoubtedly would, demand quantities of records to further their own malicious, illegal, or meddling purposes. The purposes behind demands might or might not be known to the agencies, but in any case would seem to be irrelevant under the legislation.

We feel compelling such demands to be met would not only serve no useful purpose but would put the agencies involved under a legislative mandate to waste their time. Legislation such as that proposed would encourage irresponsible demands.

In this connection we should like to emphasize the difference between making information on Government operations available to the public and a requirement that all records must be promptly available to "any person." In our opinion, section 3 of the Administrative Procedure Act makes an appropriate distinction between the right of the public to information which must be published or made generally available and the right of any single individual to demand the disclosure of non-public Government records for his personal benefit. In the latter case, the Government is now required to honor such a demand if the person lodging it is a person properly and directly concerned with the in-