

Is that the language that you are referring to?

Mr. SMITH. Yes.

Mr. GRIFFIN. Naturally reasonable men can differ on the meaning and interpretation. Congress is determining here that in those instances it is not necessary to make a disclosure, but there is no express recognition of any doctrine of executive privilege.

Mr. RUMSFELD. In other words, you are saying Congress wrote that and Congress could amend it or delete it or do anything it wishes.

Mr. GRIFFIN. Surely if there is any doctrine of executive privilege, it is founded on the Constitution and not on that section.

Mr. SMITH. I would certainly agree with that.

Mr. GRIFFIN. I do not admit a doctrine of executive privilege exists.

Mr. SMITH. The Administrative Procedure Act did not create the doctrine of executive privilege, I would certainly agree with that, and I do not think—I will even go so far as to say that I do not think it is important whether I agree or not that section 3 recognizes the doctrine of executive privilege.

Mr. GRIFFIN. You people in the agencies and departments may read it that way.

Mr. SMITH. I had always understood that is what it represented, a recognition of it.

Mr. Moss. Would you yield to me? I would like to join in that statement of my colleague that I certainly can find nothing in section 3 that recognizes the executive privilege. It is a statutory expression saying that any function of the United States requiring secrecy in the public interest can be exempted from the provisions. But I do not see any recognition.

As a matter of fact, even the framers of the Constitution were able to deal with secrecy when they felt they wanted to grant it. They did grant it to the Congress in connection with the publication of a journal of the proceedings of the Congress. They required us to publish it excepting those portions which the Congress, in its judgment, deemed required secrecy. That is the only place you will find it. So they were not unaware of the fact that there might be a requirement for secrecy. But the only place they granted it expressly was to the Congress.

Now, I notice in the response to the letter I addressed, the February 12 letter addressed to the Treasury Department, that in response to question No. 7, "What limitations are placed upon the availability of records and files to the general public either by statute, rule, or practice," the Treasury's response was as follows:

The principal limitations placed on making available records and files of the Office of the Secretary are contained in the following statutes. The relevant regulations are generally those of the operating bureaus reported elsewhere.

A. Confidential information in general: 5 U.S.C. 1002 as implemented by 31 CFR Part 1; 18 U.S.C. 1905; 5 U.S.C. 139b.

B. Income tax information: 26 U.S.C. 6103, 6104, 6106, 7213.

C. Information on returns and order forms relating to narcotic drugs and marihuana: 26 U.S.C. 7237(e).

D. Bank information: 12 U.S.C. 77; 18 U.S.C. 1906.

E. Classified information affecting the national security: 18 U.S.C. 793, 794, 798 and E.O. 10501 (1953), as amended, and as implemented by Treasury Department Order No. 160, revised, dated March 23, 1962, as amended.

F. Miscellaneous information:

Information affecting the Reconstruction Finance Corporation: 18 U.S.C. 1904.