

Coast Guard records of discharge books and certificates: 46 U.S.C. 643(f), and the source of certain information received by Coast Guard officials: 46 U.S.C. 234.

Subpenas in libel suits against the United States: 46 U.S.C. 784.

Confidential information obtained under the Export Control Act of 1949, as amended: 50 U.S.C. App. 2026(c)."

Now, it would appear that you, in this instance, cited considerable additional material, additional statutory authority, as the basis for the withholding rather than relying upon the general provisions of section 3 of the Administrative Procedure Act.

Mr. SMITH. Oh, yes, sir.

Of course, the very first one we list is, I believe is, 5 U.S.C. 1002 which is the Administrative Procedure Act. We do list that.

Mr. MOSS. Yes.

Mr. SMITH. Yes, sir.

Mr. MOSS. The only interesting thing on 5 U.S.C. 22 that I would like to raise, I remember before we amended that, that it was cited by most departments and agencies time and time again as the authority for withholding. You may continue.

Mr. SMITH. I have nothing further, Mr. Chairman, except to be available to answer any further questions that you have.

Mr. MOSS. Are there further questions?

Mr. KASS?

Mr. KASS. Mr. Smith, you stated on page 12 of your statement that the President has the constitutional responsibility under article II to preserve the confidentiality of documents and information. What is the specific constitutional citation, article II what?

Mr. SMITH. Well, section 3, I think it is, to faithfully execute the laws.

Mr. KASS. This was your interpretation?

Mr. SMITH. Yes.

Mr. KASS. Thank you. Section 3 of the Administrative Procedure Act, as I asked Mr. Schlei this morning, was passed in 1946. In the 19-year history of that section, do you think that the public information section has really been a public information section in the light of the legislative history of the section?

Mr. SMITH. So far as the Treasury is concerned, I think so. We make everything available except where we feel it should not be made available.

Mr. MOSS. We have had a minimum of complaint against the Treasury.

Mr. GRIFFIN. In fact, according to Drew Pearson's column this morning you may be giving out too much information.

Mr. SMITH. We get it both ways.

Mr. KASS. Yet in your answer to Mr. Moss' questionnaire the very first citation given earlier was 5 U.S.C. 1002 not for public information but for withholding this information.

Mr. SMITH. Yes, sir.

Mr. KASS. If the Treasury Department—you touched on that earlier with Mr. Rumsfeld—were authorized to charge reasonable fees for obtaining the information, would this relieve the problem that you spoke of—the malicious, the evil, or the meddling purpose?

Mr. SMITH. Well, it would enable us to hire the people and make the facilities available for whatever volume of requests would come.