LETTER FROM CARL L. SHIPLEY, ATTORNEY, SHIPLEY, AKERMAN & PICKETT, WASHINGTON, D.C.

Re statement on H.R. 5012.

APRIL 2, 1965.

Hon. JOHN E. MOSS,
Chairman, Foreign Operations and Government Information Subcommittee, House Government Operations Committee, House of Representatives, Washington, D.C.

DEAR CHAIRMAN MOSS: Our law office represents many persons and companies in administrative or judicial proceedings involving the Federal Government.

The ends of justice are frequently thwarted by the refusal of agencies of the Federal Government to make records promptly available, even though such records are public information and should be treated as such. Very often employees of the Federal Government are able to misuse their authority and thwart the legitimate claims of citizens against the Government by refusing to make available records which should be available.

At the moment, there is no recourse for the aggrieved citizen whose rights have been denied by the arbitrary action of some Federal agency. The enactment of H.R. 5012 will be a long step toward correcting this inequitable situation, and will strengthen our form of government.

However, H.R. 5012 can be strengthened by including a provision to protect individuals and businesses from the abuse of nonpublic information. Some Federal agencies, like the SEC, have been authorized by Congress to regulate highly sensitive segments of the national economy. The SEC deals with that extremely fragile state of mind known as investor confidence, which is the very lifeblood of the securities industry.

Through such devices as news "leaks," public statements of its staff, articles in trade journals, speeches to trade associations, publicized correspondence, and unofficial disclosure of proposed investigations, the SEC sometimes indirectly seeks to extend its regulatory authority into areas or over subject matter which Congress has not authorized by an abusive disclosure of nonpublic information. This, in turn, gives rise to adverse comment in trade journals, financial columns, and other news media, and undermines investor confidence in a segment of the industry or a particular business entity in the securities industry.

Under the Federal Constitution, Congress is the policymaking branch of the Government, and no matter with what good faith Federal agencies may seek to extend their authority, the prejudicial use of nonpublic information to coerce compliance with either policies or regulations which Congress has not authorized, is contrary to the national interest and should be brought to a halt through appropriate provisions in H.R. 5012.

Very truly yours,

CARL L. SHIPLEY.

STATEMENT OF G. B. BURNHAM, PRESIDENT, BURNHAM CHEMICAL CO.

My name is George B. Burnham and I'm president of the Burnham Chemical Co. The experience of the Burnham Chemical Co. at the hands of Government officials who withheld information from the public is a good example of why the freedom of information bill should become law. To illustrate the point, only one example is given.

In 1927 the sodium leasing laws of the United States provided that a patent (transfer of land title) could not be issued on lands which contained salines such as borax. On January 7, 1927, a Government mine inspector, Leroy A. Palmer, sent a report to the Commissioner of the General Land Office concerning the discovery of enormous borax deposits in the Kramer District of California. In spite of Palmer's report, the Department of the Interior granted patents (title) to these deposits to competitors of the Burnham Chemical Co. The commissioner of the Court of Claims reported: "This substituted statement [by prospectors] was a falsification of which the General Land Office had notice but which it ignored." [1]

Issuance of the patents by the Department of the Interior prevented the Burnham Chemical Co. from obtaining leases on part of the Kramer District land.

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[1] Report of commissioner, U.S. Court of Claims, Case No. 66–55, Finding No. 19. Copy in committee files.