

Comments From Departments and Agencies on Federal Public Records Law Legislation

LEGISLATIVE BRANCH

REPLY FROM GENERAL ACCOUNTING OFFICE

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., March 25, 1965.

HON. WILLIAM L. DAWSON,
Chairman, Committee on Government Operations,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your letter of February 19, 1965, requesting our comments on H.R. 5012 which proposes to amend section 161 of the Revised Statutes (5 U.S.C. 22) with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records.

The proposed legislation apparently is designed to permit any person to examine the records of every Federal agency except for those records which fall within the eight categories listed in the proposed subsection (c). The bill also provides that upon complaint of a person denied access to any public record, the appropriate Federal district court shall have jurisdiction to order the production of any agency records or information improperly withheld from the complainant.

We are in general agreement with the concept that governmental information and records should be made available at the request of the public to the maximum reasonable extent, under appropriate safeguards. However, we believe the reference to "any person" is too broad. This language would make it mandatory for an agency to open its records to subversives, aliens—even enemy aliens, to claim hunters, and to others whose interests might be adverse to the Government. We think that the individual being given access to Government records should, at least, be citizens of the United States, and demonstrate that their interest in the records is not adverse to the Government's interest.

We believe, also, that it should be made clear either in the law or its legislative history, that the agency may require in its regulations an identification of documents to be produced; that it may postpone production of documents which are necessary to the Government's current consideration of a matter; that the records are to be made available only for inspection, their custody remaining in the Government agency; and that a reasonable charge may be made for services rendered the public.

We have no basis for estimating the additional cost which might result from servicing legislation such as this, but we would expect that a charge for the service might discourage frivolous requests and at the same time conform with the policy of section 501 of the act of August 31, 1951, 65 Stat. 290, 5 U.S.C. 140.

In addition to the above general comments, we have some question as to how several of the eight stated exceptions would apply to several categories of files maintained by the General Accounting Office. In this connection the divisions and offices of the General Accounting Office prepare and maintain certain records which we believe should be exempted from public disclosure requirements. These include:

1. Memorandums between or within divisions concerning legal or policy matters, reviews of drafts or audit reports, letters to congressional committees and Members of the Congress, letters to heads of agencies and others, and preliminary drafts of decisions of the Comptroller General.
2. The working files relating to the material contained in the audit and report manuals and the manuals themselves.
3. Personnel and administrative files relating to such things as assignments, promotions, and performance of staff members.
4. Audit and investigative working papers.