EXECUTIVE OFFICE OF THE PRESIDENT

REPLY FROM BUREAU OF THE BUDGET

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., March 30, 1965.

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

DEAR MR. CHAIRMAN: This letter responds to your request for the views of the Bureau of the Budget with respect to H.R. 5012 and a number of other identical bills to amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records.

Under the provisions of H.R. 5012 every agency of the Federal Government except Congress and the courts would, in accordance with published rules stating the time, place, and procedure to be followed, be required to make all its records promptly available to any person except to the extent that records relating to certain matters are specifically exempted from disclosure under provisions of the bill. Upon complaint of withholding, a district court would have jurisdiction to compel the production of records, and the burden would be on the agency to sustain its action. Failure to comply with a court order would be punishable as contempt.

The records specifically exempted from disclosure under H.R. 5012 would be those matters that are "(1) required by Executive order to keep secret in the interest of national defense or foreign policy; (2) related solely to the internal personnel rules and practices of any agency; (3) specifically exempted from disclosure by statute; (4) trade secrets and commercial or financial information obtained from the public and privileged or confidential; (5) interagency or intra-agency memorandums or letters dealing solely with matters of law or policy; (6) personnel and medical files and similar matters the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; (7) investigatory files compiled for law enforcement purposes except to the extent available by law to a private party; and (8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions."

The Bureau of the Budget is committed to the principle of freedon of information. We believe that an informed public is essential to our democratic system, and we support full disclosure of Government information insofar as such disclosure is consistent with the public interest. We reluctantly conclude, however, that H.R. 5012 does not adequately protect the public interest.

Agency reports on the bill cite a variety of instances where disclosure of their records would be required contrary to the public interest. In its consideration of S. 1666, a similar bill in the last Congress, the Senate committee gave careful consideration to the examples then cited by agencies, and amended the bill in an effort to take account of these examples. Agency reports on the current bill, however, now cite other examples, thus showing the difficulty of dealing with this problem through a series of exemptions.

Another problem is the rigidity inherent in the elimination of all discretionary authority in the heads of agencies with respect to the time at which information can appropriately be released. We do not see how legislation can be drafted to take account of rapidly changing circumstances—circumstances which determine in many instances the time at which or the conditions under which disclosure of specific records would or would not be in the public interest. Premature disclosure in many instances would confuse, rather than enlighten, the public.

If H.R. 5012 were applicable to the Bureau of the Budget, the major adverse effects which it would have on the Bureau are discussed below: