

EXECUTIVE DEPARTMENTS

REPLY FROM DEPARTMENT OF AGRICULTURE

DEPARTMENT OF AGRICULTURE,
Washington, D.C., March 19, 1965.

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

DEAR MR. CHAIRMAN: This is in reply to your request of February 19, 1965, for a report on H.R. 5012 through 5021, 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. Your letters of February 24, 26, and March 2, 1965, request reports on bills, H.R. 5237, H.R. 5406, H.R. 5520, and H.R. 5583, measures which are also identical to H.R. 5012 through 5021.

The Department recommends that these bills be not passed.

Subsection (a) of the proposed amendment of section 161 of the Revised Statutes deletes from the existing section 161 the sentence which provides that: "This section does not authorize withholding information from the public or limiting the availability of records to the public." Subsection (b) of the proposed amendment provides that every agency shall, in accordance with published rules stating the time, place, and procedure to be followed, make all its records promptly available to any person. The subsection also confers on the U.S. district court "in which the complainant resides, or has his principal place of business, or in which the agency records that the complainant seeks are situated" jurisdiction to enjoin the agency from the withholding of agency records and information and to compel production "of agency records or information improperly withheld." In such cases the court shall determine the matter de novo and the burden of proof to sustain its action is placed on the agency. In the event of noncompliance with the court's order, the court may punish the responsible officers for contempt. Proceedings before the district court authorized by subsection (b) are given precedence on the docket over all other causes except those which the court deems of greater importance. The term "agency" is defined to mean "each authority (whether or not within or subject to review by another agency) of the Government of the United States other than Congress or the courts."

Subsection (c) of the proposed amendment provides that the section does not authorize withholding information from the public or limiting the availability of records to the public except with respect to those matters which are set forth in eight specific categories as follows: (1) specifically required by Executive order to be kept secret in the interest of the 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) inter-agency 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.

We believe the eight grounds for withholding information raise a number of questions of interpretation and in general may be too restrictive, with the result that agency information, records, and determinations may be required to be made available to persons which should be withheld in the public interest. We are not aware of any abuse of the "good cause to be held confidential" test in the Administrative Procedure Act which suggests the need for the more restrictive exceptions now proposed.