

tive order. A great deal of material which may require secrecy in the public interest but which does not relate to the national defense or foreign policy unless specifically exempted from disclosure by statute, might become subject to being made available as a result of section 2 of the bill; e.g., matters relating to domestic affairs that require secrecy at least for specific periods to avoid harm to the public interest generally. The extent to which matters "relating solely to the internal management of an agency" could be withheld would also be open to serious question.

For the foregoing reasons, it is our opinion that the public information requirement must preserve to the agencies, or at least to this Department, discretion to withhold from random public inspection that which the public interest requires to be withheld, including information relative to international operations.

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

OVRILLE L. FREEMAN.

### REPLY FROM DEPARTMENT OF COMMERCE

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,  
Washington, D.C., March 30, 1965.

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

DEAR MR. CHAIRMAN: This is in reply to your request for the views of this Department concerning H.R. 5012 and a number of 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. These bills would amend section 161 of the Revised Statutes (5 U.S.C. 22) by adding two new subsections. New subsection (b) would require every agency in the executive branch, in accordance with published rules stating the time, place, and procedure to be followed, to make all its records promptly available to any person unless specifically excepted by new subsection (c). It further provides that the U.S. district courts may enjoin an agency from the withholding of agency records and information and order the production of any agency records and information improperly withheld from a complainant. In such cases the court would determine the matter de novo and the burden would be upon the agency to sustain its action.

Subsection (c) does authorize withholding of records and information on the following eight grounds: Specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy; internal personnel rules and agency practices; specifically exempted from disclosure by statute; trade secrets and commercial or financial information obtained from the public and privileged or confidential; interagency or intraagency memorandums or letters dealing solely with matters of law or policy; personnel and medical files and similar matters, the disclosure of which would clearly constitute invasion of privacy; investigatory files compiled for law enforcement purposes; and examination, operating, or condition reports used by agencies responsible for the regulation or supervision of financial institutions.

We are in accord with the view that information in Government agencies should be made available to the public, but only to the extent that making information available will not unduly disrupt the operation of Government, result in damage to innocent members of the public, or otherwise result in more harm than good. It is our view that H.R. 5012 insufficiently safeguards these interests and we are therefore unable to recommend enactment of this legislation.

Sections 1(c) and 2 of the bill would in effect repeal sections 3(b) and 3(c) of the Administrative Procedure Act (5 U.S.C. 1002 (b) and (c)) relating to availability of final opinions, orders, and other official records. Section 3(c) provides that save as otherwise required by statute, matters of official record shall be made available to "persons properly and directly concerned except information held confidential for good cause found." The determination at present of what persons are properly and directly concerned and what agency records are confidential for good cause found are left to agency discretion. H.R. 5012 would remove these matters from agency discretion. We seriously question the desirability of removing this discretion from agencies and requiring them