

as proposed in H.R. 5012 to make all their records available to anyone upon demand except within the framework of the exceptions in subsection (c) thereof.

We think it would be disruptive to the conduct of the Government's business, particularly in view of the provision for private suit in district courts, to compel production of records in which the agency concerned would have the burden of sustaining its action and the responsible officers thereof be punished for contempt in event of noncompliance of the court's order.

We believe a judgment on the merits of H.R. 5012 must involve a thoughtful balancing between the bill's objective on the one hand, and on the other the public interest in efficient and effective management of the Government's business.

H.R. 5012 presents a number of problems with respect to specific activities of this Department.

1. We assume that the exception in subsection (c) (3) for items "specifically exempted from disclosure by statute" is intended to preserve the protection now accorded information obtained in confidence from members of the public under such provisions as section 6 of the Export Control Act, section 705 of the Defense Production Act, 15 U.S.C. 176a and other similar statutory provisions. We urge that the legislative history be made clear on this point. It is not clear what the relationship of section 2 of the bill is to 18 U.S.C. 1905, a penal statute which prohibits the unauthorized disclosure of any information relating to trade secrets, confidential business data and the like which have been received by any Federal employee in the course of his official duties.

2. The requirement that records be made promptly available to any person ignores such fundamental questions as the need to know, citizenship, and age of the individual. It would leave the agency defenseless against unnecessary and unreasonable demands. Also, no provision is made to recover costs of furnishing the records, which could be very large, as, for example, in cases where extensive reference to old, archived records, were sought.

3. In the Area Redevelopment Administration certain confidential information is obtained from applicants as part of an application for financial assistance. These records are considered confidential because they contain financial data and individual trade information. Section 18(b) of the Area Redevelopment Act prohibits disclosure of unauthorized information concerning any future action or plan of the Secretary which might affect the value of securities and section 20 provides that the Secretary shall maintain and make available certain specific information about applications as soon as they are approved. It is not clear whether the exception in subsection (c) (4) relating to "trade secrets and commercial or financial information obtained from the public and privileged or confidential" would exempt the records of loan and grant agencies from public disclosure, especially where the enabling legislation of such agencies clearly spells out what information is to be made public, as is the case with the Area Redevelopment Administration. At the very least internal evaluations of applications for loans and grants should be clearly exempt from public disclosure.

4. The relationship between the proposed section 161(c) (3) and section 2 of the bill is ambiguous. For example, section 2 of the bill might be interpreted to repeal 35 U.S.C. 122, which presently preserves the confidential status of patent applications. Even if 35 U.S.C. 122 is not repealed, proposed section 161(c) (3) may not protect patent applications. It can reasonably be argued that patent applications are not "specifically exempted from disclosure by statute," because 35 U.S.C. 122 allows disclosure of such applications under certain circumstances and thus does not fully exempt them from disclosure. Furthermore, 35 U.S.C. 122 allows disclosure of patent applications when "necessary to carry out the provisions of any act of Congress" and H.R. 5012, if enacted, can be interpreted to be just such an act. Enactment of H.R. 5012 may well result in a flood of litigation against the Patent Office by persons seeking to gain the use of inventions not yet protected by patent. The outcome of such litigation cannot be predicted because of these problems outlined.

5. The Patent Office, pursuant to 35 U.S.C. 31, 32 investigates the character and reputation of attorneys and agents desiring to practice before it. It appears that H.R. 5012 would not maintain the present secrecy of the Patent Office files on its attorneys and agents, who are not Patent Office employees. If such files were to be opened to the public, it would become very difficult for the Patent Office to obtain the information it needs to effect the mandate of 35 U.S.C. 31.

6. We would oppose placing the burden upon the agency to sustain its action in withholding information. In order to sustain its burden in showing that