

The use of the word "solely" in exceptions 2 and 5 for all practical purposes emasculates the two exceptions. These exemptions presently provide that exempted documents are those " * * * related solely to the internal personnel rules and practices of any agency * * *" and any " * * * interagency or intra-agency memorandums or letter dealing solely with matters of law or policy * * *." Since most documents would not meet such absolute standards, the exemptions would be virtually nonexistent. It would be better to insert in lieu of "solely" the words "insofar as" or their equivalent permitting partial disclosure of documents of a mixed nature.

Lastly, it should also be noted that H.R. 5012 presently amends 5 U.S.C. 22. Since H.R. 5012 deals with the same subject matter as section 3 of the Administrative Procedure Act of June 11, 1946 (60 Stat. 238), questions will arise as to what extent H.R. 5012 amend section 3. Since the obvious intent of H.R. 5012 is to change the existing law embodied in the Administrative Procedure Act, it is suggested that the changes if approved specifically amend section 3 rather than 5 U.S.C. 22.

While we desire to insure the free flow of information between the Government and the public, H.R. 5012 as it is presently written contains many drawbacks and we, therefore, recommend against favorable consideration.

BUREAU OF PUBLIC ROADS COMMENTS ON H.R. 5012

This bill would add two new subsections, (b) and (c), to section 22 of title 5, United States Code. These subsections would require every Federal agency to make all of its records promptly available to any person under rules of procedure which it shall make. The Federal district courts would have jurisdiction to enjoin the withholding of agency records, with the burden of proof upon the Federal agency to justify its withholding, and contempt procedures for non-complying Federal officers. Eight categories of exceptions to this requirement of availability are made; however, because of the indefiniteness of these categories it is impossible to tell exactly which of this Bureau's records would be covered by the bill.

H.R. 5012 does not require the party seeking information from a Government agency to specify with any particularity what information is sought. This, taken together with a lack of a requirement of bona fides in the person seeking inspection of records, would invite fishing expeditions and harassment without a corresponding public benefit. Even in the case where a person was seeking particular information in good faith, the exceptions governing records which need not be disclosed are sufficiently vague to be productive of a vast volume of litigation. We are not able to ascertain, for example, whether appraisals and other materials related to real property acquisition and in the custody of Public Roads would be required to be disclosed to the public.

Because of the sweeping and indefinite nature of this proposal, the Bureau of Public Roads recommends against its enactment.

ASSISTANT SECRETARY FOR ADMINISTRATION COMMENTS ON H.R. 5012

Insofar as the bill would be applicable to the Department of Commerce, and particularly to the activities under my supervision, it is my view that the bill is unsatisfactory, and I therefore recommend against its enactment in its present form.

My reasons may be summarized as follows:

1. The enumeration of specific classes of information in the proposed section 161(c) of the Revised Statutes is not sufficiently inclusive of the types of information for which the need for an exemption can be anticipated at this time. For example,

(a) Item (6) should be broadened to read as follows: "(6) personnel, medical, security, and investigative files and similar matters the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;" (new language italicized).

(b) A new item (9) should be added to read substantially as follows:

"(9) All budget estimates and supporting materials submitted to the Bureau of the Budget, and decisions of the President as to his budget recommendations and estimates until they are made public by the President." (See Bureau of the Budget Circular No. A-10 (revised), dated January 18, 1964).

2. The enumeration of specific classes of information in the proposed section 161(c) is not sufficiently comprehensive or flexible to provide appropriately for