

1. Reports of proceedings pertaining to the conduct of, or the manner of performance of duties by military and civilian personnel and the names of persons who participated in the investigation or adjudication of any particular case.
2. All reports, records, and files pertaining to individual cases in the military, civilian, and industrial security programs, including the names of individuals who participated in the consideration and disposition of any particular case and the decisions made.
3. Examination questions and answers to be used in training courses or in a determination of the qualifications of candidates for employment, entrance to duty, advancement, or promotion.
4. Information as to the identity of confidential sources of information and information furnished in confidence.
5. Information which is, or reasonably may be expected to be, connected with any pending or anticipated litigation before any Federal or State court or regulatory body, until such information is presented in evidence or is determined to be appropriate for public disclosure.
6. Advance information on proposed plans to procure, lease, or otherwise acquire and dispose of materials, real estate, facilities, or functions, which would provide undue or discriminatory advantage to private or personal interests.
7. Preliminary documents pertaining to proposed plans or policy development when premature disclosure would affect adversely morale, discipline, or efficiency.
8. Conversations and communications between personnel of the Department of Defense, including Defense contractors, and between such persons and representatives of other Government agencies, which are merely advisory or preliminary in nature and which do not represent any final official action, and documentary evidence of such contacts.
9. Unclassified information furnished in confidence by foreign nations or international organizations to the United States, the dissemination of which is limited by the foreign source.

The Department of Defense appreciates the desirability of facilitating the availability of public information and endorses this objective. However, in view of the wide dissimilarity of functions and problems of the various executive agencies, there is a serious question whether a single statute of general applicability can achieve effectively this intended result.

The Department notes with interest that several of the eminent legal experts serving as members of the Board of Consultants and Review of the Administrative Procedure Act, established by the Senate Subcommittee on Administrative Practice and Procedure, indicated their serious reservations about many of the provisions of S. 1663, 88th Congress, that are comparable in purpose and in language to H.R. 5012. We invite your attention particularly to the comments of Marvin E. Frankel and Walter Gellhorn of the Columbia University Law School which begin at page 678 (as par. 4 of those comments) of the hearings of July 21, 22, and 23, 1964, before the Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary, U.S. Senate, 88th Congress, 2d session.

In associating himself with the comments of Professors Frankel and Gellhorn, Prof. Clark Hyse of the Harvard Law School stated in his letter of July 1 to the chairman of the Subcommittee on Administrative Practice and Procedure, Committee on the Judiciary, U.S. Senate (appearing on p. 593 of the hearings of July 21, 22, and 23, 1964) several observations which this Department would endorse as equally applicable to H.R. 5012. These include the comment that:

It is my judgment that improvement in the administrative process is more likely to be achieved by detailed, ongoing studies by an administrative conference than by legislative enactment of S. 1663.

and the statement—

Because it does not appear that the proponents of the changes proposed by S. 1663 have used the "method of patiently pursuing the facts and preparing remedial measures in light of the specific evil disclosed." I hope that the subcommittee will proceed with caution.

Even Prof. Kenneth Culp Davis of the University of Chicago, a vigorous proponent of revision of many portions of the Administrative Procedure Act, indicated his opposition to section 3(c) of S. 1663, on which H.R. 5012 is based. The reasons for this opposition are clearly set forth on pages 247 through 249 of the hearings of July 21, 22, and 23, 1964, *supra*. Of particular interest are the following comments of Professor Davis which summarize his views:

But section 3(c) in its present form will do little if any good, and it will do an immense amount of harm. It will prevent agencies from receiving