confidential information in writing from private parties, and for that reason it will not have the effect of opening up the confidential information to the public. It will cause working papers within an agency to be destroyed, but it will not cause them to be made public. It will cause exchanges of ideas and false starts to be made orally instead of in writing, but the effect will not be to make anything of this sort public * * *.

The public interest will suffer when administrators are forced to transact the public business without written records. The public will gain little or no increased information.

For the reasons set forth above, the Department of Defense is strongly opposed to the enactment of H.R. 5012.

The Bureau of the Budegt advises that from the standpoint of the President's program, there is no objection to the submission of this report.

Sincerely,

L. NIEDERLEHNER,
Acting General Counsel.

REPLY FROM DEPARTMENT OF THE INTERIOR, OFFICE OF THE SECRETARY

APRIL 29, 1965.

Hon. WILLIAM L. DAWSON,
Chairman, Committe on Government Operations,
House of Representatives,
Washington, D.C.

DEAR MR. DAWSON: Your committee has requested our report on H.R. 5012, a bill 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.

Reports have also been requested on H.R. 5013, H.R. 5014, H.R. 5015, H.R. 5016, H.R. 5017, H.R. 5018, H.R. 5019, H.R. 5020, H.R. 5021, H.R. 5237, H.R. 5406, H.R. 5520, H.R. 5583, and H.R. 6172, identical bills.

H.R. 5012 amends section 161 of the Revised Statutes, as amended (5 U.S.C. 22). Section 161 now reads as follows:

"The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it. This section does not authorize withholding information from the public or limiting the availability of records to the public."

H.R. 5012 retains all of the words of the present Rev. Stat. 161, but adds to the last sentence a series of eight exceptions. It thereby changes the last sentence from a disclaimer which states that nothing in that particular section authorizes a withholding of information, into a limitation which provides that only the excepted information may be withheld and that all other information must be made available.

H.R. 5012 also transfers from the executive branch to the judicial branch the authority to determine whether particular information is or is not excepted even though the determination involves an exercise of judgment or discretion which is permitted by the legislative rule.

The Department of Justice has advised the committee that these bills contravene the separation of powers doctrine and would be unconstitutional since they impinge upon the constitutional authority of the Executive to withhold documents in the executive branch where, in his discretion, he determines that the public interest requires that they be withheld. For similar reasons, the Justice Department has also advised that the provision transferring such authority to the judicial branch would also be unconstitutional.

Aside from these constitutional objections, the Justice Department has presented to the committee the reasons for the administration's conclusion that the bills are unwise. We concur in the statement presented by Assistant Attorney General Schlei on March 30.

Although we recommend against the enactment of the bill, the following technical deficiencies in the bill are listed for your information:

1. Rev. Stat. 161 applies only to the 10 executive departments enumerated in Rev. Stat. 158. It does not apply to all Federal agencies.