

cal and other operating programs of the Department and thus make it impossible to carry out the functions which we are required by law to perform.

Section 1(c)(5) would exclude from the disclosure requirement "interagency or intraagency memorandums or letters dealing solely with matters of law or policy." We are also concerned with the far more numerous instances of memorandums dealing with mixed questions of fact and law or policy formulations made with respect to given factual situations. These matters would apparently be subject to disclosure under the bill. The availability of such information to public disclosure, even where the conclusions are only tentative, could seriously inhibit the development of legal or policy positions within the Department and impair our enforcement programs.

We also note that the act authorizes the courts to determine de novo whether information has been improperly withheld by a Government agency. If judicial review is provided, it should be based upon the administrative record of a denial rather than on a trial de novo with the burden of proof placed upon the agency. This would be in accordance with normal procedure, which has been most satisfactory from the standpoint of interested parties, for handling review of administrative decisions.

In view of the objectionable features of this legislation we are opposed to its enactment.

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

Sincerely,

W. WILLARD WIRTZ, *Secretary of Labor.*

REPLY FROM POST OFFICE DEPARTMENT

APRIL 23, 1965.

HON. WILLIAM L. DAWSON,
*Chairman, Committee on Government Operations,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to your request for a report on the bills H.R. 5012 through H.R. 5021, H.R. 5237, H.R. 5406, H.R. 5520, and H.R. 5583, all of which are identical. They propose 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.

Subsection (b) of the proposed amendment would require every agency to "make *all* its records promptly available to *any* person" (italic supplied). This language would permit any crank or individual with some prejudice or complaint in a given matter to demand that the Department make available all its records, which, in some cases might go back 50 to 100 years.

Of primary importance to the Department is the exemption contained in item (7) of section 1(c), relating to investigatory files compiled for law enforcement purposes. The conditions under which statements and evidence can be furnished defendants is presently prescribed by section 3500 of title 18, United States Code.

Our Bureau of the Chief Postal Inspector, in the conduct of its operations, compiles a number of records and reports that are not related to law enforcement because criminality is not involved. We believe that it would not be in the public interest to release such reports for reasons that (1) from the standpoint of management they have greater value when the investigator knows that his conclusions are immune from public disclosure, (2) patrons in many instances volunteer information of considerable value in service investigations when they have assurance that their information will not be revealed, and (3) investigations involving local disputes become further aggravated when the opinions of local citizens are publicly disclosed.

We additionally feel that the exemptions (4) and (5) of section 1(c) are too restrictive. We believe, for example, that in such matters as the negotiation of contracts and service arrangements, the Department should be on the same footing as a private party so far as disclosure of its position is concerned in order that it may be assured of the benefits arising from competition. As a matter of fairness and right, private business information should be appropriately protected at least from competitors. We find no authority in the proposed legislation to prevent the curious from access to information received by the Department in confidence from private firms in connection with service negotiations.