

It is our view that any public information requirement must preserve to the agency discretion and the right to determine the extent to which it is feasible, or in the public interest, to make its records available for random public inspection by persons who have no direct concern. Exercise of such discretion with respect to the disclosure of information is inherent in the administrator's role. To remove the administrator's discretion and judgment in the information field would be inconsistent with his responsibilities and the public interest.

For the above-stated reasons, the Department opposes the enactment of this legislation.

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

Sincerely yours,

JOHN A. GRONOUSKI, *Postmaster General.*

REPLY FROM DEPARTMENT OF STATE

DEPARTMENT OF STATE,
Washington, D.C., March 12, 1965.

Hon. WILLIAM L. DAWSON,
Chairman, Committee on Government Operations, House of Representatives.

DEAR MR. CHAIRMAN: Your letters to the Department of State, dated February 19, 24, 26, and March 2, 1965, requested comments on a number of bills, H.R. 5012 through 5021, 5237, 5406, 5520, and 5583, which propose to amend section 161 of the Revised Statutes (5 U.S.C. 22) with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records. These several bills are identical.

The effect of the bills is to delete the final sentence of the current 5 U.S.C. 22 and add subsections (b) and (c) which, insofar as this Department is concerned, are substantially similar in contents to section 3(c) of the revised S. 1663 of the 88th Congress, 2d Session, a bill to revise the Administrative Procedure Act of 1946, as amended, (5 U.S.C. 1001 et seq.).

Subsection (b) requires every agency to make its records available to the public in accordance with published rules stating the time, place, and procedure to be followed. It is difficult to conceive how the Department could satisfy such a requirement, given its multifarious operations and its hundreds of establishments abroad.

There is another aspect of subsection (b) deserving of the committee's attention. The committee would, we are sure, agree that the Department is in a better position to determine whether the conduct of foreign policy requires that a particular matter not be disclosed than a court would be. Nevertheless, the bill appears to require that the Department assume the burden of proof in court against a complainant seeking material, indeed even on risk of punishment of responsible officers for contempt on failure to comply with a court order. Such a procedure clearly assumes that the court will have access to the information in order to determine whether it must be disclosed. It additionally creates the risk that the court will disagree with the Department's conclusion that the material must be withheld in the interest of our foreign policy. Whether or not safeguards are inserted to limit the court's access to the nature of the information and its independence of judgment, once the judiciary has been interjected into this sphere, it is uncertain whether its rulings will accord with the Department's appraisal of what must be withheld in furtherance of the conduct of our foreign policy. It should therefore be sufficient for the Department to enter a categorical defense that the Secretary has determined that disclosure of the material would adversely affect the foreign policy of the United States.

Subsection (b) would also grant any person, irrespective of his relationship, if any, to the material requested or the effect of the information on his pecuniary or other legally protected interests to seek any and all information in which he may have a capricious curiosity. It could thus encourage fishing expeditions of the widest range, which could impose severe burdens of time, money, and personnel on an agency whose operations are as farflung and decentralized throughout the globe as the Department of State's, merely in order to satisfy a complainant's idle whim. The phrase "improperly withheld" appears to be the only restraint upon such a complaint and its generality is totally undefined. Indeed,