

the subsection is broad enough to permit representatives of foreign governments to roam through the Department's files to meet their intelligence requirements.

Subsection (c) fails to define "records" other than by the list of exclusions. Given the vernacular understanding of what constitutes a record, the duty to disclose would include all documents embodying foreign policy recommendations in the executive branch, unless they fall within the exclusions. If anything, by attempting to define the term through a list of exclusions, the risk of harmful disclosure is aggravated. Thus, for example, does the fact that (c) (5) specifies "interagency or intra-agency memoranda" imply, on the basis of the "inclusio unius, exclusio alterius" maxim, that intergovernmental memorandums are not protected? What is meant by the language "solely with matters of law or policy?" Is the implication that if any other matter is contained in a memorandum or letter that the entire document must be disclosed? That only the material not of law or policy must be disclosed? How does one separate out such material and who has the final word on which category particular information falls within? Similar questions arise as to each of the exclusions in which this Department has an interest.

The exclusion in subsection (c) (1) would not meet the Department's needs. The exclusion appears to contemplate an itemized listing in advance of every aspect of foreign policy for which secrecy is required. This requirement misconceives the nature of foreign policy, its variety in application to particular circumstances, and its fluidity in the face of rapidly changing events. Furthermore, to insist on a priori catalog of every conceivable circumstance requiring secrecy will inevitably lead to gaps and vexatious problems of interpretations of the scope of individually listed items, particularly in view of the statutory condition that the matter be "specifically" required to be kept secret. Furthermore, we question the feasibility of handling this problem by Executive order; amendment is difficult and cumbersome and lacks the flexibility and speed demanded by the series of ad hoc decisions which of necessity offer the only method for safeguarding the meticulous protection of foreign policy in this context. It will be noted that the comparable exemption under the Administrative Procedure Act currently reads "any function of the United States requiring secrecy in the public interest." The determination of whether secrecy is dictated by the public interest is made by the agency concerned. If the committee believes that standard too sweeping, the Department would have no objection to a standard which reads; "required to be kept secret in the interest of the national defense or foreign policy as determined by the President or his delegate."

Finally, it is our view that subsection (c) (2) should be broadened to include "any matter relating solely to the internal management of an agency," the standard incorporated in the present Administrative Procedure Act. There are obviously a number of internal matters which are not solely related to personnel rules and practices; e.g., budget and fiscal questions, and hence are not covered by the proposed standard in the subject bills. Since almost any piece of paper may be held to constitute a record, this material would comprehend voluminous and scattered rules, regulations, delegations of authority, and many more informal documents. To require their disclosure would impose an onerous burden on the Department's personnel and facilities which would either disrupt our services to the public, or result in a large increase in personnel, facilities, and appropriations, with relatively little corresponding benefit to the public.

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

Sincerely yours,

DOUGLAS MACARTHUR II,
Assistant Secretary for Congressional Relations.

REPLY FROM DEPARTMENT OF THE TREASURY

DEPARTMENT OF THE TREASURY,
Washington, D.C., March 26, 1965.

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

DEAR MR. CHAIRMAN: Reference is made to your requests for the views of this Department on H.R. 5012 through H.R. 5021, H.R. 5237, H.R. 5406, H.R. 5520, H.R. 5583, and H.R. 6172, to amend section 161 of the Revised Statutes with re-