

spect to the authority of Federal officers and agencies to withhold information and limit the availability of records.

The Treasury Department agrees with the objective of increasing public knowledge of Government operations which affect the public. The Department objects, however, to legislation in the form of the present bills which would require unwarranted disclosure to any person of Government files. Under such a requirement the public interest would suffer and private persons would be unnecessarily injured.

A memorandum stating our more specific objections to this kind of legislation is attached.

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

Sincerely yours,

FRED B. SMITH,
Acting General Counsel.

DEPARTMENT OF THE TREASURY

MEMORANDUM ON H.R. 5012 AND OTHER IDENTICAL BILLS, 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

H.R. 5012 and other identical bills are designed to substitute a revised section 161 of the Revised Statutes, as amended (5 U.S.C. 22), generally known as the housekeeping statute, for the access to records section of the Administrative Procedure Act (sec. 3(c), 5 U.S.C. 1002(c)). The amendment takes the form of the addition of new subsections. Subsection (b) would require each agency to "make all its records promptly available to any person," and would invest the district courts of the United States with jurisdiction to enjoin an agency from withholding records or information improperly withheld. Subsection (c) would provide that the housekeeping statute shall not authorize withholding information from the public or limiting the availability of records to the public except matters that fall within eight specified categories. Section 2 of the statute would repeal inconsistent laws, presumably section 3(c) of the Administrative Procedure Act. This memorandum is an analysis of the Department's specific objections to legislation of this type. The objections of the Department are discussed under the four following major topics:

I. DISCLOSURE OF ALL RECORDS TO ANY PERSON

Subsection (b) of the bills would require the Treasury to make all of its records (not covered by the specific exemptions) promptly available to "any person." The damaging and even absurd results of such a provision are illustrated by Prof. Kenneth Culp Davis of the University of Chicago, an outstanding expert on administrative law, in his testimony in the July 1964 hearings on S. 1663 before the Senate Subcommittee on Administrative Practice and Procedure. Concerning this requirement in section 3(c) he said that the President would have to honor a request of high school children "playing games" to make available all White House records "minus the seven exceptions"; the Department of Justice would have to provide to a mentally disturbed person all correspondence relating to a judicial appointment, etc. (at 247, 248). Other administrative law scholars said that section 3(c) "takes too little account of the individual citizen's interest in nondisclosure of public records pertaining to him" (Frankel and Gellhorn, at 678). The inappropriateness of the proposed provision with respect to many Treasury records is indicated by the specific recognition of the confidentiality of the records of various Treasury offices in the Federal Reports Act of 1942 (5 U.S.C. 139-139(f)). The legislative history of this act shows that the reason for this confidentiality was both the private character of much of the information in the records, and the injury to essential Government operations which would result from indiscriminate disclosure.

Furthermore, Congress should be aware of the enormous burden subsection (b) of the House bills would place on the taxpayers. The result of the proposed requirement might well be that all major agencies would require additional appropriations to maintain legal and administrative personnel engaged principally in determining disclosure requirements; this would add significantly to the expense of the Government.