

INDEPENDENT AGENCIES

REPLY FROM ATOMIC ENERGY COMMISSION

U.S. ATOMIC ENERGY COMMISSION,
Washington, D.C., May 6, 1965.

Hon. JOHN E. MOSS,
*Chairman, Subcommittee on Foreign Operations and Government Operations,
Committee on Government Operations, House of Representatives.*

DEAR MR. MOSS: Thank you for your letter of March 25, 1965, requesting the comments of the Atomic Energy Commission 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.

The Commission is in sympathy with the underlying policy of the bill in favor of full availability of information to the general public, but believes that its adoption in its present form might create problems in the Commission's performance of its statutory duties.

The bill would in effect amend section 3(c) of the Administrative Procedure Act, 5 U.S.C. 1001. We believe that it is more appropriate that any modification of section 3(c) be accomplished by an amendment of the Administrative Procedure Act.

The bill would deprive agencies of the authority under section 3(c) to hold information confidential, "for good cause found," pursuant to declared and justifiable agency policy. The areas of exemption as enumerated in the bill are in our view too narrow and specific to permit the Commission, with its diverse functions, to perform its various statutory duties effectively. Some of the categories of information subject to withholding and which might be required to be made matters of public record, to the prejudice of legitimate public and private interests are: confidential information which officers or employees are forbidden to divulge by 18 U.S.C. 1905, the scope of which does not appear to be identical with the exception for trade secrets in H.R. 5012; confidential information received from educational and other nonprofit institutions; confidential memorandums and reports prepared as part of the adjudicatory process; information on unclassified patent applications, contracts, and selection of contractors in advance of formal announcement, and other information which might assist a person to benefit improperly from a Commission program; and information withheld selectively from foreign nations in the overall interest of the United States in order to achieve more favorable information exchange arrangements with other countries, and withheld pursuant to agreements with other countries. Possibly some information within these categories could be construed as falling within the areas of exemption enumerated in the bill.

We note that the bill would permit suit in any district court even by citizens or residents of foreign countries. We note also that the bill would afford no protection for information which has been given to an agency with the understanding that it would be treated confidentially.

Appendix A, which is attached, explains our comments in greater detail. For your convenience, I am also enclosing a copy of part 9 of our regulations.

The Bureau of the Budget has no objection to the submission of these comments from the standpoint of the administration's program.

Cordially,

DR. GLENN T. SEABORG,
Chairman.