

APPENDIX A

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

As we understand this bill, it would retain in section 161 of the Revised Statutes the present general authorization of departmental regulations governing the conduct of the various departments. It would delete the present second sentence of section 161, which was added by Public Law 85-619 (72 Stat. 547), effective August 12, 1958, and which provides: "This section does not authorize withholding information from the public or limiting the availability of records to the public."

That sentence would be replaced by new paragraphs (b) and (c) which would govern not merely "departments," as does the present section 161, but would apply to all "agencies" as defined in the new paragraph (b).

The proposed paragraph (b) of section 161 of the Revised Statutes would require that every agency, in accordance with published rules, "make all its records promptly available to any person." The district court of the United States in which the plaintiff resides or has his principal place of business, or in which the records in question are situated, would be given jurisdiction to require the production of withheld records and information. The burden would be on the agency to sustain its action. Such proceedings would be given priority over all other cases "except as to those causes which the court deems of greater importance," and would be "expedited in every way." Under the proposed paragraph (c), it would be provided that the section does not authorize withholding information except: (1) As required by Executive order in the interest of the national defense or foreign policy; (2) related solely to internal personnel practices; (3) specifically exempted from disclosure by statute; (4) trade secrets and privileged commercial and financial information obtained from the public; (5) intraagency and interagency communications, dealing solely with matters of law or policy; (6) documents the disclosure of which would constitute an unwarranted invasion of privacy; (7) investigatory files compiled for law enforcement purposes, except as available to a private party; and (8) certain documents concerning the regulation of financial institutions.

We note that except for the definition of "agency," which is slightly different, the proposed paragraph (b) is identical with subsection 3(c) of the current S. 1336, a bill "To amend the Administrative Procedure Act, and for other purposes." S. 1336, as you know, is a proposed comprehensive revision of the Administrative Procedure Act of 1946, 5 U.S.C. section 1001 et seq., and the exceptions enumerated in the proposed paragraph (c) of H.R. 5012 are identical with those enumerated in paragraph 3(e) of S. 1336. We note also that under section 2 of H.R. 5012 all laws inconsistent with the proposed amendments would be repealed by the enactment of the bill.

The Atomic Energy 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 would constitute a serious impediment to the Commission's performance of its statutory duties.

The Atomic Energy Commission was established by the Atomic Energy Act of 1946 (60 Stat. 755; 42 U.S.C. 1801 et seq.) as amended by the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

The programs authorized by the 1954 act with respect to atomic energy are programs: To conduct and assist research and development; to disseminate unclassified scientific and technical information, and to control the dissemination and declassification of restricted data as defined in the act; to control the possession, use and production of atomic energy and special nuclear material; to encourage widespread use of atomic energy for peaceful purposes; to engage in international cooperation in order to promote the common defense and make available to cooperating nations the benefits of peaceful applications of atomic energy; and to conduct a program of administration consistent with the foregoing policies, and programs which will enable the Congress to be currently informed so as to take further appropriate legislative action. A considerable portion of the Commission's activities is concerned with the development and production of atomic weapons.

In addition to administrative and executive functions of the Commission conducted under the General Manager, and licensing and other regulatory functions under the Director of Regulation, the Commission conducts the following types of