

- (j) Any other document involving matters of internal agency management;
- (k) Names of individuals who have received exposure to radiation.

Part 9 is by its terms applicable to proceedings under Part 2: Rules of Practice and Part 25: Permits for Access to Restricted Data, of the Commission's rules and regulations. It is the Commission's practice to apply the criteria of part 9 to the disclosure of information in other circumstances. You will note that in certain cases under 10 CFR 9.7, disclosure of documents held confidential under section 9.4 may be authorized pursuant to subpoena or, as required, to other governmental personnel.

We believe that the adoption of H.R. 5012 would be unfortunate, particularly in view of the explicit terms of section 2 repealing all laws inconsistent with the proposed amendment. Its effect would be to amend the existing terms of section 3(c) of the Administrative Procedure Act, and 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 effect of the bill would be to deprive agencies of the authority, granted by section 3(c) of the Administrative Procedure Act, to hold information confidential "for good cause found," and would permit them to withhold from public inspection only records in the limited categories enumerated in the bill. These areas of exemption are in our judgment too narrow to permit an agency such as the Atomic Energy Commission, with its diverse functions, to perform its various statutory duties effectively.

Section 9.4 of the Commission's regulations, enumerating the categories in which information may be withheld, corresponds to a considerable extent with the exceptions in H.R. 5012. We believe that section 9.4 of our regulations is convincing evidence of the Commission's agreement with the basic objectives of the bill, and consider that section 9.4 has gone as far in that direction as is consistent with the Commission's performance of its duties. The bill does not leave room, as we believe it should, for the effectuation of declared and justifiable agency policy as a proper basis for withholding information.

While it may be useful to enumerate specific categories of documents to be excluded from records available to the public, it is of primary importance that, considering the diversity of functions of various agencies, particular agencies be given discretion to exclude documents which, in their informed judgement, should be held confidential even though they do not fall within one of the enumerated classes. It is, therefore, important that, even if such categories are enumerated, there continue to be such a provision as now exists in section 3(c) of the Administrative Procedure Act, permitting an agency to withhold from publication "information held confidential for good cause found." Such a course would permit the enumerated categories to furnish a guide for agency discretion, but would permit due regard for the flexibility necessary for the proper operation of individual agencies.

The wisdom of retaining statutory authority in an agency to withhold information held confidential for good cause found, rather than attempting to enumerate exhaustively the categories to be kept confidential, is illustrated by the provision of the Commission's regulations in section 9.4(k) that the names of persons exposed to radiation are not to be disclosed.

It is not entirely clear that such information would fall within the sixth proposed exemption in the bill, covering personnel and medical files and similar matters, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. But we believe that there would be general agreement that such an exception, which like others in section 9.4 is for the benefit of the person affected, is highly consistent with the public interest.

The bill would open up the possibility that anyone at all, including competitors of a firm which has furnished information, could bring suit in a distant court to compel the disclosure of such information. It would not even be required that the complainant be a citizen or resident of the United States. The firm which had furnished the information would presumably have the right to intervene in the suit as an interested party. In view of the nature of a good deal of the information in the hands of the Commission, even such as is not classified as "defense information" or "restricted data," we feel that it is far more consistent with the public interest to leave such disclosure to the informed judgment of the agency under published rules such as part 9.

In the area of business confidential information, as was pointed out in my letter of March 15, 1965, the Atomic Energy Commission complies with 18 U.S.C. 1905, which provides: