

"Whoever, being an officer or employee of the United States or of any department or agency thereof, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined not more than \$1,000, or imprisoned not more than one year or both; and shall be removed from office or employment."

The proposed exception in H.R. 5012 for "trade secrets and commercial or financial information obtained from the public and privileged or confidential" covers something of the same subject matter as 18 U.S.C. 1905, but is less explicit than 18 U.S.C. 1905 and may be considered to be different in scope. 18 U.S.C. 1905 appears to be a "specific exemption from disclosure by statute," and there is no obvious indication in section 2 of H.R. 5012 of an intention to repeal it. Under these circumstances, the coexistence of 18 U.S.C. 1905 and the proposed fourth exemption in the bill for trade secrets would appear to present some possibility of confusion. The fact that Government employees are subject to criminal penalties under 18 U.S.C. 1905 suggests that the relation between that statute and the bill should be clarified.

Moreover, the Commission often receives in confidence from educational and other nonprofit institutions information which is not trade secrets or commercial or financial information, but which, as in the case of the ideas of investigators for research projects, should be granted similar protection.

We note that the bill would not provide any exception for minutes of Commission meetings, and it might be argued that under the terms of the bill minutes of the Commission which did not happen to deal with matters required by Executive order to be kept secret in the interest of national defense or foreign security would be available to anyone. There may be grave doubt whether such minutes would fall within the exemption of "memoranda or letters dealing solely with matters of law or policy", and we believe that making such minutes matters of public record would seriously hamper the Commission's performance of its diverse and important responsibilities.

As another example of the inadequacy of the exceptions enumerated in the bill, it might be argued that confidential memorandums and reports prepared as part of the adjudicatory process, and circulated only among Commissioners and other personnel having adjudicatory duties, would also become matters of public record. We believe that the areas of exempted documents should include, as did S. 1666 of the 88th Congress (a bill to amend sec. 3 of the Administrative Procedure Act), a category of internal memorandums relating to the consideration and disposition of adjudicatory and rulemaking matters.

One other class of documents which the Commission properly refrains from disclosing, and which might arguably be required to be disclosed under the bill, includes those enumerated in AEC manual, chapter 2104, discussed in my letter of March 15, 1965.

In addition to staff papers submitted to the Commission for consideration, chapter 2104 includes unclassified patent applications not yet released; information concerning bills of material, time schedules, anticipated requirements, new sites and selection of contractors in advance of formal announcement, or any other information which might assist a person to benefit improperly from a Commission program; and lists of disqualified bidders and ineligible contractors. We believe that these exceptions are necessary to the proper performance of the Commission's statutory duties.

The bill does not take into account the necessity for an agency such as the Commission to withhold selectively information in the overall interest of the United States in order to achieve more favorable arrangements with other countries. For example, the Commission can save significant funds and accelerate its technical program by entering into information exchange arrangements with advanced nations under which certain unclassified technical information is provided in exchange for comparable data from other countries. The negotiation of such arrangements would become much more difficult, if not impossible, if the Commission were required to disclose all its technological information "to any