

quently, there is little in the way of factual information which is not now available to the public. Indeed, the Board is not aware of any complaints concerning its present informational policies with respect to basic factual matters.

Turning to the provisions of the legislation, the Board assumes that the exemption from disclosure covering matters "specifically exempted * * * by statute" would be applicable to its procedures under sections 902(f) (divulging of information), 1001 (conduct of proceedings) and 1104 (withholding of information) of the Federal Aviation Act (49 U.S.C. 1472(f), 1481 and 1504).

Concerning the exemption for "inter-agency or intra-agency memorandums or letters dealing solely with matters of law or policy", the Board believes that there are documents of this nature not restricted to matters of "law or policy" which should not be disclosed to the public since many of them contain staff views and recommendations. It has long been recognized that the disclosure of internal governmental materials containing staff views and recommendations tends to destroy candor in presentation contrary to the public interest, and the courts have accorded a qualified public policy privilege to such materials for this reason. See *Kaiser Aluminum & Chemical Corp. v. United States*, 157 F. Supp. 939. As there stated by Mr. Justice Reed (at pp. 945-946):

"Free and open comments on the advantages and disadvantages of a proposed course of governmental management would be adversely affected if the civil servant or executive assistant were compelled by publicity to bear the blame for errors or bad judgment properly chargeable to the responsible individual with power to decide and act. Government from its nature has necessarily been granted a certain freedom from control beyond that given the citizen. It is true that it now submits itself to suit but it must retain privileges for the good of all.

"There is a public policy involved in this claim of privilege for this advisory opinion—the policy of open, frank discussion between subordinate and chief * * *."

The Board also believes that exempting from disclosure only "investigatory files compiled for law enforcement purposes" could impede and hamper the discharge of certain of its important functions. Although investigatory files developed in discharge of the Board's responsibility under section 701(e) of the act (49 U.S.C. 1441(e)) for ascertaining the cause of aircraft accidents, and making recommendations designed to avoid future such accidents, are not compiled for "law enforcement purposes," such files contain staff views and statements. Thus, the opening up of these files would be contrary to the public interest as well as impede the discharge of the Board's responsibilities in this area.

The Board further believes that permitting persons desiring access to records to select the judicial district most convenient to them for production of the records, rather than the district in which the records are located, could impose a severe administrative burden on it. In addition to the time and expense that would be required for travel by the Board's employees to numerous points throughout the country, substantial costs and inconvenience would be incurred by shipment of voluminous records to such points.

Despite the fact that H.R. 5012 and the related bills constitute improvement over S. 1666; the Board is opposed to their enactment because it believes that its existing policies and procedures adequately provide the public with factual information, and because of the undesirable effects of certain provisions of the bills on the discharge of its functions.

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

For the Civil Aeronautics Board:

HAROLD R. SANDERSON, *Secretary*.

REPLY FROM CIVIL SERVICE COMMISSION

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., March 11, 1965.

Hon. WILLIAM L. DAWSON,

Chairman, Committee on Government Operations, House of Representatives.

DEAR MR. CHAIRMAN: This is in further reply to your letters of February 19, 1965, February 24, 1965, February 26, 1965, and March 2, 1965, requesting the