

Commission's views on H.R. 5012 through 5021, H.R. 5237, H.R. 5406, H.R. 5520, and H.R. 5583, identical bills 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.

These identical bills would amend section 161 of the Revised Statutes (5 U.S.C. 22). Subsection (a) repeats present law. Subsection (b) requires every Federal agency, except Congress and the Courts, to make its records promptly available to any person and authorizes recourse to the district courts to enforce this right. Subsection (c) provides certain exceptions under which an agency could withhold information from the public or limit the availability of its records.

The following are the excepted matters that are particularly of interest to the Commission:

- (1) Specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy;
- (2) Related solely to the internal personnel rules and practices of any agency;
- (5) Inter-agency or intra-agency memorandums or letters dealing solely with matters of law or policy;
- (6) Personnel and medical files and similar matters, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (7) Investigatory files compiled for law enforcement purposes except to the extent available by law to a private party.

We would interpret the exception No. (2) as exempting matters relating solely to the internal personnel rules and practices of the Federal Government as a whole. This is consistent with the interpretation by the Department of Justice of similar language appearing in the Administrative Procedure Act.

The Civil Service Commission does not object to the enactment of the provisions contained in the identical bills listed above.

The Bureau of the Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

By direction of the Commission:

Sincerely yours,

JOHN W. MACY, Jr., *Chairman.*

REPLY FROM FEDERAL AVIATION AGENCY

FEDERAL AVIATION AGENCY,
Washington, D.C., March 11, 1965.

HON. WILLIAM L. DAWSON,
Chairman, Committee on Government Operations, House of Representatives.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of this Agency with respect to H.R. 5012 through 5021, 5237, 5406, 5520, and 5583, identical bills 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 provisions of this bill raise a number of basic questions concerning the availability of Agency records and documents. The existing statute defining availability of Agency records, the Administrative Procedure Act, provides that only "matters of official record" need be made available only to "persons properly and directly concerned" and that even these documents may be held confidential "for good cause found." The three quoted limitations operate to give agencies needed discretion as to what may be withheld. All three of the limitations are omitted from H.R. 5012. In addition, a judicial procedure for compelling disclosure is provided which begins with the presumption that the Agency has improperly withheld the information sought—a presumption which the Agency must overcome to vindicate its nondisclosure.

If a statutory change respecting availability of agency records and documents is thought desirable, the statute ought to be clear that only factual material need be made available. We suggest the word "factual" be inserted before the word "records" on page 2, line 3, of H.R. 5012. On the same point, the eight exceptions listed in the proposed section 161(c) are essential as they include those matters for which there is no legitimate disclosure need.

We oppose the provisions in the proposed section 161(b) following the first sentence in that section, which grant broad authority to district courts to compel disclosure of agency materials. The underlying issue here is where discretion should lie to decide what matters are properly withheld. The existing statute