

places that discretion in the agencies. H.R. 5012 would in large measure place the discretion in the Federal district court. It is our belief that agencies are in a better position to determine the precise consequences of releasing a given document and for that reason should retain initial discretion to decide what should be disclosed. Placing this discretion in the courts can only be justified by a clear showing that agencies are abusing their powers. It has not been our experience that such a charge has been or could be made. In view of the burden which will without question be placed on the courts by this proposal, and in view of the facility the proposal affords for unreasonable, dilatory and harassing requests, we would hope no shift of discretion would be made that is not founded on a well-documented case that the existing system is being abused.

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

Sincerely,

N. E. HALABY, *Administrator.*

REPLY FROM FEDERAL COMMUNICATIONS COMMISSION

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., April 2, 1965.

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

DEAR MR. CHAIRMAN: This is in reply to your request seeking this Commission's comments on H.R. 5012 to H.R. 5021, inclusive, and H.R. 5237, H.R. 5406, H.R. 5520, H.R. 5583, and H.R. 6172, 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.

Enclosed please find copies of our comments on these bills. We are advised by the Bureau of the Budget that from the standpoint of the administration's program there is no objection to the presentation of this report to your committee.

Yours sincerely,

E. WILLIAM HENRY, *Chairman.*

COMMENTS OF THE FEDERAL COMMUNICATIONS COMMISSION ON H.R. 5012 TO H.R. 5021, INCLUSIVE, AND H.R. 5237, H.R. 5406, H.R. 5520, H.R. 5583, AND H.R. 6172, 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

Bills H.R. 5012, et al., would amend section 161 of the Revised Statutes (5 U.S.C. 22) with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records. The bills provide, with eight specific exceptions,¹ that every agency shall publish rules making "all its records promptly available to any person." They further provide for an action in a district court to require the agency to produce records improperly withheld.

The basic statutory provision governing the availability of Commission records is section 3(c) of the Administrative Procedure Act (5 U.S.C. 1002(c)). That section provides: "Save as otherwise required by statute, matters of official record shall in accordance with published rule be made available to

¹ The eight areas in which an agency may withhold information from the public, or limit the availability of records to the public, are matters that are "(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; (3) specifically exempted from disclosure by statute; (4) trade secrets and commercial or financial information obtained from the public and privileged or confidential; (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; and (8) contained in or related to examination, operating, or condition reports prepared by, or on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions."