

persons properly and directly concerned except information held confidential for good cause found." Section 4(j) of the Communications Act further provides in pertinent part: "* * * Every vote and official act of the Commission shall be entered of record, and its proceedings shall be public upon the request of any party interested. The Commission is authorized to withhold publication of records or proceedings containing secret information affecting the national defense." Sections 213(f) and 412 of the Communications Act (47 U.S.C. 213(f) and 412), give the Commission discretion to withhold specific types of information.

The Commission has published rules and regulations which specify which of its records are open to public inspection and which are ordinarily not for public disclosure (sec. 0.417, 47 CFR 0.417). A copy of these rules is attached. This section of the rules also specifies procedures whereby interested parties may, at the Commission's discretion, gain access to those records not ordinarily available for public inspection.

The Commission agrees with the underlying purpose of these bills—that agencies should operate publicly. Section 2 of these bills would repeal all "laws or parts of laws inconsistent with the amendment made by the first section of this Act." Among the laws which would be affected is subsection 3(c) of the Administrative Procedure Act, 5 U.S.C. 1002(c), which permits matters of official record to be held confidential for good cause found. We believe that the general standard of subsection 3(c) has worked well, and that the Commission has fairly complied with it. However, should Congress find it desirable to enact legislation along the lines of H.R. 5012, this Commission does not anticipate any particular difficulty in administering a more specific statute. We do oppose certain features of the proposals in H.R. 5012 and should like to comment on these particular points.

By requiring every agency to make all of its records, except those containing eight specified categories of information, promptly available to any person, and by repealing all laws inconsistent with this requirement, these bills would substantially enlarge the categories of material and records which would be open to the public. We believe that the bills go too far in this direction.

First, we believe that in the absence of good cause shown, it is sound public policy to exclude from public inspection matters prepared by agency personnel for use within the agency, such as memorandums and reports, as well as inter-agency memorandums, letters, and reports of investigations. (See generally, "Attorney General's Manual on the Administrative Procedure Act," pp. 24-26.)

Subsection (c) (5), exempting from disclosure "interagency or intra-agency memorandums or letters dealing solely with matters of law or policy," would be difficult to interpret and would not protect all intra-agency memorandums. Most intra-agency memorandums of necessity deal with both facts and law or policy. Furthermore, subject to provisions of law governing separation of functions (§ 5(c) of the Administrative Procedure Act; § 409(c) (1) of the Communications Act), the Commission should be able to receive memorandums and working papers from the staff without the need for disclosing such working papers. It is important to the effective functioning of the Commission that members of its staff who are called upon for advice and assistance may respond upon a confidential basis. If staff memorandums are to be examined almost routinely outside the Commission, staff advice and suggestions will inevitably be inhibited. We stress that our position is not premised on any desire to permit agencies to decide cases upon extraneous or incorrect bases (indeed, we must set out the factual and legal bases of all our actions and these bases are subject to review by the courts). Rather, our aim here is simply to permit the most effective and full exchange between the agency members and their staff—the very same type of exchange permitted, for example, between judges and their staffs.

Finally, we point out that the same considerations apply to correspondence and memorandums exchanged with the executive branch (e.g., the Bureau of the Budget) or with other agencies (e.g., the Federal Trade Commission).

Furthermore, the effect of the provisions of H.R. 5012 regarding secret matter is unclear to us. Under section 4(j) of the Communications Act, 47 U.S.C. 154(j), the Commission "is authorized to withhold publication of records or proceedings containing secret information affecting the national defense." See also section 3 of the Administrative Procedure Act, 5 U.S.C. 1002. A Commission rule promulgated pursuant to that authority currently provides that maps showing the exact location of submarine cables shall not be open to public inspection (Commission rules, sec. 0.417, 47 CFR 0.417). Items on the Commission's