classified agenda are also withheld under section 4(j) of the Communications Act because they contain "secret information affecting the national defense." We believe that subsection (c)(3) of H.R. 5012 providing an exemption for matter "specifically exempted from disclosure by statute" would be interpreted to include section 4(j) of the Communications Act. However, the provision of section (c)(1) of H.R. 5012 for an Executive order relating to secret matter might be deemed to repeal section 4(j) in light of the repeal provisions of section 2 of H.R. 5012. This question should be clarified so that the Commission's present authority under section 4(j) is retained, particularly since it is unclear whether a general Executive order or a series of particularized ones is contemplated.

Subsection (c)(4) of the bills recognizes the necessity of protecting the confidentiality of trade secrets and "commercial or financial information" obtained by the agency from the public and "privileged or confidential." The Commission receives information, which by rule is not available to the public, pertaining to such matters as reports, contracts, maps, etc., in connection with the valuation of common carrier property (47 U.S.C. 213); contracts relating to foreign wire or radio communications whose disclosure would place American communication companies at a competitive disadvantage (47 U.S.C. 412); and certain technical data furnished the Commission by manufacturers of radio receivers (Commission rules, sec. 0.417, 47 CFR 0.417). We believe it would be undesirable to make all of this information automatically available to any person, rather than retaining the Commission's present discretion. It is not clear, however, whether the phrase "commercial or financial information obtained from the public and *privileged or confidential*" [emphasis supplied] is broad enough to include all of the above-described information.

We are also concerned with the meaning of subsection (c)(7), which exempts from public disclosure "investigatory files compiled for law-enforcement purposes except to the extent available by law to a private party." It is not clear at what point letters, memorandums, complaints, etc., become an "investigatory file" within the meaning of this provision. If this provision is not intended to apply until an investigation is undertaken by the Commission staff, then the complaint initiating an investigation would have to be made public upon request. Such a result would be highly undesirable. For example, the Commission has received confidential information in the past from broadcast station employees who charged that the station was being operated in violation of the law or Commission rules or policies. Such information might not be forthcoming if it could not be supplied, initially at least, on a confidential basis.

We also suggest that a ninth category be added to exempt from the broad disclosure provisions of these bills all material in adjudicatory cases, the procedure for which is governed by sections 5, 7, and 8 of the Administrative Procedure Act (5 U.S.C. 1004–1007). For example, in many hearing cases, especially those involving license renewal or revocation, the Commission does not disclose the names of witnesses who have been subpenaed. Whether such information should be disclosed is a highly specialized question which we urge should not be dealt with in general public disclosure legislation.

Finally, the proposed enforcement procedure also appears to be undesirable. It reverses the normal presumption that a Government agency has acted properly and in accordance with law. We also believe that, with respect to this Commission at any rate, there is no need for creating a new cause of action in the district courts. A Commission refusal to make records available for public inspection should be reviewable by a person aggrieved in the same manner as other agency actions under section 402(a) of the Communications Act (47 U.S.C. 402(a)), and the Judicial Review Act of 1950 (5 U.S.C. 1031–1042). The latter statute contains ample provisions to insure a full and fair review of the agency's actions, without the time-consuming and unnecessary resort to de novo trial of the entire matter. The statute limits, properly, we think, resort to the courts to those substantially affected by an agency order. If there were to be a different standard as to standing to seek review, amendment of the above-cited provisions would be required.[2]

Attachment.

Adopted March 31, 1965, Commissioner Loevinger absent.

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[2] Adoption of a different standard allowing any person to obtain review, irrespective of his interest or aggrievement, would raise serious legal and policy questions. Cf. dissenting opinion of Douglas, J., *Scripps-Howard Radio, Inc.* v. *Federal Communications Commission*, 316 U.S. 4.