

In its present form, that section provides in its first sentence that the head of each department is authorized to prescribe regulations, not inconsistent with law, for (among other things) the custody, use, and preservation of the records, papers, and property appertaining to it. It further provides in its second sentence (added by Public Law 85-619, approved Aug. 12, 1958) that the section does not authorize withholding information from the public or limiting the availability of records to the public.

H.R. 5012 would retain the substance of the first sentence and would add two new subsections. The first of these, subsection (b), would provide that every agency—defined as each authority, whether or not within or subject to review by another agency, of the Government of the United States other than Congress or the courts—shall, in accordance with published rules stating the time, place, and procedure, make all its records promptly available to any person. The U.S. district court in the district where complainant resides or has his principal place of business, or where the records are situated, would have jurisdiction to enjoin the withholding of records and information. The bill provides that in such cases “the court shall determine the matter de novo and the burden shall be upon the agency to sustain its action.”

The other new subsection, subsection (c), would provide that the section does not authorize withholding information from the public or limiting the availability of records to the public except in eight specified categories, of which the last covers matters “contained in or related to examination, operating, or condition reports prepared by, on behalf, or for the use of any agency responsible for the regulation or supervision of financial institutions.”

As the agency responsible for the Federal regulatory and supervisory functions with respect to all Federal savings and loan associations and all savings and loan associations and similar institutions whose accounts are insured by the Federal Savings and Loan Insurance Corporation, the Federal Home Loan Bank Board is of the view that all matters relating to the condition or affairs of financial institutions should be exempt from disclosure where the agency having authority with respect to the examination, regulation, or supervision of such institutions determines that disclosure would not be in the public interest.

The present bill, by limiting the exemption to such matters as are “contained in or related to examination, operating, or condition reports” as set forth in the bill, falls short of what the Board believes is needed in this connection for the protection of the public.

Further, the Board is concerned that the bill appears to disregard the doctrine of executive privilege. While the Board recognizes that there are areas of disagreement over that doctrine, the Board also feels that the existence of this doctrine from the very founding of the Republic is evidence of the vital role it plays in protecting full freedom of discussion as the basis for administrative operations and decisionmaking. The exemption in the bill for “interagency or intra-agency memorandums or letters dealing solely with matters of law or policy” is far from an adequate expression of the scope of this doctrine.

While a precise estimate is not possible, it is the Board's opinion that enactment of this bill would add substantially to the expenses of the Board and the Federal Savings and Loan Insurance Corporation in fulfilling their statutory obligations.

For the foregoing reasons the Board is not in favor of the enactment of H.R. 5012.

Informal advice has been received from the Bureau of the Budget that, from the standpoint of the administration's program, there is no objection to the submission of this report.

Sincerely yours,

JOHN E. HORNE, *Chairman.*

REPLY FROM FEDERAL MARITIME COMMISSION

FEDERAL MARITIME COMMISSION,
Washington, D.C., March 12, 1965.

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

DEAR MR. CHAIRMAN: The following comments are in response to your request of February 19, 1965, for the views of the Federal Maritime Commission on