

provided in subsection (b). Consistent with the Board's position earlier taken with reference to a similar provision in S. 1663, however, the Board opposes the provisions of subsection (b) which would permit "any person," whether or not properly and directly concerned, to have access to all agency records not specifically exempted and, upon mere allegation of an improper withholding, would permit "any person" to bring suit to obtain a court order requiring production. While it is true that, under H.R. 5012, a court order requiring production of agency records would have to be based upon a finding that such records had been improperly withheld, it is believed that such requirement would have but a minimal deterrent effect on the potential number of baseless complaints that could be filed.

In respect to cases filed, the agency is assigned the burden of sustaining its action in withholding records or information from "any person." Thus, in any case where the records sought do not fall within one of the eight exemptions set forth in subsection (c) of H.R. 5012, the agency, in attempting to sustain its action, would be denied the opportunity presently offered by section 3(c) of the Administrative Procedure Act of showing that the person demanding access to the agency records is not properly and directly concerned with the matter reflected in such records. The Board is in accord with the purposes of subsections (b) and (c) of H.R. 5012, and, in reference thereto, finds reasonable the placing on the agency of the burden of sustaining its withholding action. However, that burden would be made unreasonable by retention in subsection (b) of the requirement that every agency shall make its records available to "any person."

Sincerely yours,

WM. MCC. MARTIN, Jr.

REPLY FROM GENERAL SERVICES ADMINISTRATION

GENERAL SERVICES ADMINISTRATION,
Washington, D.C., April 5, 1965.

Hon. JOHN E. MOSS,
*Chairman, Subcommittee on Foreign Operations and Government Information,
Committee on Governmental Operations, House of Representatives.*

DEAR MR. MOSS: Your letter of March 25, 1965, requested the views of the General Services Administration on H.R. 5012, a bill 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 bill would, in effect, substitute for section 3(c) of the Administrative Procedure Act (5 U.S.C. 1002(c)), new provisions, to be included in 5 U.S.C. 22, to govern the availability to the public of Government agency "records," providing jurisdiction in district courts of the United States to enjoin agency withholding of certain "agency records and information," and providing for certain related aspects of judicial procedure, including punishment for contempt of "responsible officers."

The bill, which provides for eight categories of exception from a general information disclosure and records availability requirement, is similar to that portion of the proposal in S. 1336 and S. 1160 which would amend section 3(c) of the Administrative Procedure Act, and is a refinement of similar provisions in S. 1666 and S. 1663 of the 88th Congress.

The proposed bill is intended to delineate more clearly information and records access rights and to impose restrictions on the right of Government agencies to limit access to Government records and information. It would, in effect, circumscribe the present broad agency authority in section 3 of the Administrative Procedure Act to withhold information relating solely to agency "internal management," or information requiring nondisclosure "in the public interest" or "held confidential for good cause found," and would also, apparently, impose limitations on executive branch implied powers over records and information disclosure.

We are naturally in agreement with the general objective of proper public access to Government records and information as a necessary characteristic of our free society. However, we think the bill would result, in some areas, in undesirable and perhaps unintended results adversely affecting both agency functions and reasonable rights of privacy of affected individuals.

Past legislative efforts to deal with this problem appear to have been unsuccessful, primarily, we believe, because the remedy proposed was too sweep-