

all its records promptly available to any person," except as to matters that are (1) specifically required by Executive Order to be kept secret in the interest of 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 of reports prepared by, on behalf of, or for the use of, any agency responsible for the regulation or supervision of financial institutions.

These bills would also provide that upon complaint by a person seeking agency records, Federal district courts would have jurisdiction to enjoin the agency involved from withholding such records and to order the production of improperly held records. In such cases, the burden of sustaining any withholding of records would be on the agency involved and district courts would be authorized to punish agency officers responsible for noncompliance with court orders. In addition, such actions would take precedence on district court dockets over all other actions except those deemed by the court to be "of greater importance."

Under the present law, matters of official record are required to be made available "to persons properly and directly concerned," except for matters "requiring secrecy in the public interest," "relating solely to the internal management of an agency", or "held confidential for good cause found" (section 3 of the Administrative Procedure Act). The proposed bills would require disclosure "to any person" of "all its records". The only exceptions would be material which the agency finds by published rule qualifies within one of the eight categories of records specified above.

The Housing Agency believes this enlargement of the public records requirements would not benefit persons seeking information from proprietary agencies such as HHFA, but would be very burdensome for the Agency. The great majority of our papers relating to agency operations concern preliminary processing of applications for mortgage insurance or loans or grants authorized by the various programs administered by the Agency. These papers are not a matter of official record and are not now required to be made available even to persons directly concerned.

Taken literally, the phrase, "all its records" would seem to require disclosure to any person of all intra-agency reports and recommendations and other internal memoranda (except those dealing "solely with matters of law or policy") involving the exchange of preliminary views, as contrasted to final action by authorized officials. This would hinder the free and candid exchange of preliminary views within the Agency.

In addition, the disclosure would often not be in the best interest of the applicants for benefits under our programs. In the urban renewal program, for example, the local public agency applying for a loan or grant would not wish such background information as appraisals of property to be acquired in the project area to be made a matter of public record by a Federal agency which is not itself responsible for the acquisition under State or local law. The Agency might bring some of such material under the exception provided for records such as "intra-agency memorandums or letters dealing solely with matters of law or policy." However, in many cases it is a difficult task to determine whether a particular matter is one of law or fact, or a combination of law or fact. To be required to do so on a piecemeal basis would be a considerable administrative burden, and an unnecessary one in the light of the effectiveness of the present general provisions relating to public disclosures by agencies acting in a proprietary, rather than a regulatory, capacity.

The Housing Agency recognizes the continuing need to study and improve the administrative process relating to the disclosure of public records by Federal agencies. However, we recommend against the changes proposed in these bills. We believe they would needlessly encumber and delay our work, and would often hurt rather than protect those with whom we deal.

The Bureau of the Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

ROBERT C. WEAVER, *Administrator.*