

information as well as the legitimate right of privacy of the individuals concerned."

It should be noted that all classes of records excepted from NASA's general policy as stated above, under subsection (c) of the proposed legislation, would be privileged.

The legislation would impose undue burdens on the Government and its officials in carrying out its business. The courts have long recognized the necessity for officials of the Government to exercise their duties unembarrassed by lawsuits in respect of actions taken in the performance of their work—suits which would consume time and energies that would otherwise be devoted to governmental services. *Barr v. Matteo*, 360 U.S. 564, 571 (1959); *Gregoire v. Biddle*, 177 F. 2d 579, 581.

There is no precise meaning ascribed to the term "records" as it appears in subsection (b). It could mean any document or item containing information in the possession of the agency including such diverse objects as contracts, invoices, transcription belts, and tape recordings. Moreover, there later appears in subsection (b) the phrase "records and information." It is not clear whether the term "records," when it first appears, is intended to encompass "information," nor is it clear what "information" would mean as opposed to "records." If it means something different from records, then it would not be available under agency procedures which only encompass means of acquiring "records," leaving "information" to be acquired through court process.

There is no requirement that one requesting records identify the desired item or make a showing that he has a legitimate need for them. Anyone, merely out of idle curiosity, could compel an agency to produce all of its records except for those classes of items withheld pursuant to subsection (c) of the proposed legislation. The expense and administrative burden stemming from that type of request could seriously impair the operations of any agency, including NASA.

Shifting the burden of proof to the agency for sustaining its decisions with respect to withholding creates additional problems. There would be evidentiary questions, such as the extent of the showing an agency would have to make to sustain its actions and the extent to which a court would be permitted to go behind an administrative determination that records should be withheld because they deal with exempt categories of information.

From the foregoing it appears that, not only is the proposed legislation unnecessary in that its purposes can be, and, in fact, are being, accomplished under existing law, the administration of them would result in confusion and unnecessary expense of time and money. Accordingly, the National Aeronautics and Space Administration recommends against the enactment of H.R. 5012.

This report has been submitted to the Bureau of the Budget which has advised that, from the viewpoint of the program of the President, there is no objection to its submission to the Congress.

Sincerely yours,

RICHARD L. CALLAGHAN,
Assistant Administrator for Legislative Affairs.

REPLY FROM NATIONAL LABOR RELATIONS BOARD

NATIONAL LABOR RELATIONS BOARD,
Washington, D.C., March 25, 1964.

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

DEAR CONGRESSMAN MOSS: It is our understanding, based on communications with Mr. Benny Kass of the subcommittee staff, that hearings will soon be held 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, and that you would be interested in having an expression of the views of the National Labor Relations Board respecting the impact this bill would have upon its operations.

At the outset, permit me to state that we do not challenge the general purposes of the bill to assure access by the public, to the fullest extent practicable, to information concerning the operations of administrative and other governmental agencies. In our view, however, the proposal contains a number of serious defi-