ciencies which, if enacted into law, would hamper this agency in carrying out its functions effectively and in the best interests of the public.

The proposed subsection (b) of section 161 would require agencies to make their records "available to any person." The phrase "any person" is unduly embracive and could lead to a disruption of the Government's business by opening the door to unjustified requests for information by curiosity seekers and irresponsible persons. (See testimony of Prof. Kenneth C. Davis, hearings before the Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary, 88th Cong., 2d sess. of S. 1663, July 23, 1964, pp. 247–248.) Consideration should be given to some words of limitation, such as "persons properly and directly concerned" (as presently contained in section 3 of the Administrative Procedure Act, 5 U.S.C. 1002), or "persons with a legitimate interest."

The district court procedure set out in subsection (b) to restrain the withholding of agency records provides for a de novo determination by the court. However, where the alleged withholding has taken place in an administrative proceeding it would appear that the normal procedure for judicial review of final agency orders should be followed and would provide an adequate remedy. In the case of this agency, section 10(f) of the National Labor Relations Act provides that any party aggrieved by a final order of the Board may obtain review of such order in an appropriate U.S. court of appeals.

Subsection (b) also provides that in suits to compel disclosure of records "the burden shall be upon the agency to sustain its action." This is contrary to the ordinary civil discovery procedure; rule 34 of the Federal Rules of Civil Procedure provides that a court may order production of books and papers upon motion of "any party showing good cause therefor." There would appear to be no good reason to reverse the procedure when an agency of the Government is the holder of the records sought by a litigant.

Subsection (c) (2) excepts from the provisions of subsection (b) matters that are "related solely to the internal personnel rules and practices of an agency." The language of this exception appears to be unduly restrictive. We see no good reason for departing from the exception now provided in section 3 of the Administrative Procedure Act—i.e., "any matter relating solely to the internal management of an agency," and this language should be substituted.

Subsection (c) (3) excepts matters that are "specifically exempted from disclosure by statute." The use of the narrow term "statute" fails to take into account the law in this area created by sound judicial decisions. The substitution of "law" for "statute" would preserve the carefully considered principles established in such landmark cases as *U.S.* v. *Morgan*, 313 U.S. 409, 422; *Hickman* v. *Taylor*, 329 U.S. 657; *Kaiser Aluminum Co.* v. *U.S.*, 157 F. Supp. 939 (Ct. Cl.), and *Roviaro* v. *U.S.*, 353 U.S. 53, 59–62.

Subsection (c) (4) excepts matters that are "trade secrets and commercial or financial information obtained from the public and privileged or confidential." The phrase "commercial or financial" unnecessarily limits this exception. The equivalent exception in S. 1666 (88th Cong., 2d sess.), as passed by the Senate (110 Congressional Record 17080), contained more preferable language, i.e., "trade secrets and other information obtained from the public and customarily privileged or confidential."

Subsection (c) (5) excepts "interagency or intra-agency memoranda or letters dealing solely with matters of law or policy." There is infrequent occasion to deal with abstract legal or policy questions; most agency internal communications relate to legal or policy issues based upon a specific set of facts or to mixed questions of law, policy, and fact. In view of the limited nature of the exception provided by (5), an agency would thus be required to make available virtually all of its internal documents, since most of them would deal to some extent with facts. This would include internal staff memoranda containing advice and recommendations relative to pending cases, working papers, tentative draft decisions, etc. All of these documents tend to reveal the mental processes of decision makers and their staffs in arriving at determinations in specific cases and are entitled to be privileged against disclosure. See *Morgan* v. *U.S.*, *supra*, and *Kaiser Aluminum Co.* v. *N.L.R.B.*, *supra*. In sum, if internal reports are to be worth anything, they must be based on facts rather than abstractions, and they