

5. Question. In what circumstances are unpublished opinions and orders cited or used as precedents in other proceedings?

Answer. None.

*Explanation.*—Although, as is explained above, there are a great many orders of the Immigration and Naturalization Service, the Board of Immigration Appeals, and the Board of Parole which are not published, none of these orders is cited or used as precedent in subsequent proceedings.

6. Question. What is the procedure for making available to the general public the records and files, interpretations and legal opinions of your agency?

Answer. Interpretations and legal opinions of the Department of Justice which may be of general interest are published in the "Opinions of the Attorney General," available in most law libraries and on sale at the Government Printing Office. Recent opinions not yet included in the bound volumes are available to the public upon request, to the extent of the available supply of pamphlet copies. Matters of official record are available to the public in accordance with published rules. (See 8 CFR pt. 2 (1953); 8 CFR 103.7, 282.1, 299.2 (1964 supp.); 8 CFR 501.25(4), 503.1 (1958); 28 CFR 0.7, 3.600, 5.601, 10.10, 11.300, 12.40, 12.41 (1958).)

Other information in the possession of the Department is made available to persons properly and directly concerned or to members of the general public, upon request to the Office of the Attorney General, except to the extent that secrecy is required in the public interest or information contained therein is required by statute or other authority to be withheld.

*Explanation.*—The Department of Justice is not an administrative agency in the sense contemplated by the Administrative Procedure Act. Unlike the major regulatory agencies, it is not engaged primarily in the receipt of applications or complaints from the public, the conduct of public hearings thereon, and implementation of the laws committed to its administration through the issuance of rules and orders based upon the records of such hearings. Rather, the principal functions of the Department of Justice include furnishing legal counsel and legal services to the President, the executive departments, and the Government generally, investigating and detecting violations of Federal laws and enforcing those laws, and representing the United States in court actions and appeals generally. As a result, the records and files of the Department do not consist primarily of documents relating to administrative proceedings. Instead, because of the nature of the Department's functions, most of its records involve functions which require secrecy in the public interest and cannot be made freely available to the general public without injury to public or private interests and prejudice to the proper performance of necessary governmental functions. Nevertheless, in recent years the Department of Justice, through its Office of Public Information in the Office of the Attorney General, has made every effort to comply with every reasonable request for information. In furtherance of its policy to make information and records in its possession available to the public to the maximum extent possible, the Department not only makes matters of official record available to persons properly and directly concerned, as required by law. It also makes other information from records and files available to such persons and to members of the public generally, including representatives of the communications media, where such information can be appropriately disclosed.

7. Question. What limitations are placed upon the availability of records and files to the general public, either by statute, rule or practice?

Answer. Certain information critical to the national defense is withheld from the public pursuant to Executive Order No. 10501 and Department of Justice Order No. 279-62. Investigative files and reports generally, including any information which may identify confidential informants, are not available to the public. (40 Ops. A.G. 45 (1941); *Touhy v. Ragan*, 340 U.S. 462.) Information relating to the Department's presentation of matters to grand juries is kept secret pursuant to Rule 6(e) of the Rules of Criminal Procedure. A number of statutes make it a criminal offense for an officer or employee of the Government to divulge information obtained by them in the course of their employment, or reports, returns, or records filed with their department. See, e.g., 18 U.S.C. 1905 (trade secrets); 26 U.S.C. 7213(a) (income tax returns); 26 U.S.C. 7237(e) (narcotics tax returns). Various commercial information received or assembled in connection with departmental functions must be withheld pursuant to these requirements. Section 9(c) of Executive Order No. 10450, of April 27, 1953, 18 F.R. 2489, provides that the reports and other investigative material and