

information developed in Government employee security investigations shall be kept confidential. 28 C.F.R. 1.6 (1963 ed.) provides in general that the files of the pardon attorney in this Department shall be made available only to officials concerned with the consideration of the petition. Part 1 of title 28, Code of Federal Regulations, was issued as a Department of Justice order with approval of the President (cf. 27 F.R. 11002, 11003). It is therefore more in the nature of an Executive order than of a mere departmental regulation. Internal memorandums, analyses, reports, and recommendations generally are treated as confidential in furtherance of the public policy of open, frank discussion in the internal handling of administrative matters. See *Kaiser Aluminum & Chemical v. Reynolds* (157 F. Supp. 939 (1958)). As legal advisers to the Attorney General and to other Federal officials, attorneys in the Department of Justice are subject to Canon 37 of the Canons of Professional Ethics, pursuant to which they are obligated to preserve their client's confidences. Accordingly, a broad range of information which comes into the possession of the Department in connection with legal counsel and legal services must be treated as confidential. (In this connection, see 5 U.S.C. 139b (1958).) Similarly, internal legal advice is privileged from disclosure under the so-called "attorneys' work product" rule. (See *Hickman v. Taylor*, 329 U.S. 495.) Alien registration and fingerprint records are required to be held confidential by section 264(b) of the Immigration and Nationality Act, 66 Stat. 224, 8 U.S.C. 1304(b). Since section 236(a) of that act (8 U.S.C. 1226(a)) provides that hearings in exclusion cases shall be kept "separate and apart from the public," information developed in such proceedings is treated as confidential except to the extent that the respondent consents to its publication. As is indicated above, records and information relating to parole hearings are withheld from the public for the reasons set forth in 28 C.F.R. 2.48. Although the settlement of civil litigation to which the United States is a party is made a matter of public information, and although papers filed in civil actions and criminal prosecutions are, of course, matters of public record, files, memorandum, and other documents relating to the Department's conduct of litigation on behalf of the United States and agencies thereof are withheld to the extent that secrecy is required in the public interest. (See "Hearings Before the Special Subcommittee to Investigate the Department of Justice of the House Committee on the Judiciary," 83d Cong., 1st sess., ser. 2, pt. 2, 2433 (1953). See also "Federal Statutes on the Availability of Information, House Committee on Government Information Operations," 86th Cong., 2d sess. (Committee print, March 1960).)

*Explanation.*—See the explanation which appears under 6, above.

8. Question. In what circumstances are private parties dealing with your agency required in any manner to resort to organization or procedure not published in the Federal Register? (Sec. 3(a).)

Answer. None.

9. Question. In what types of cases has your agency refrained from publishing rules where there is involved any function of the United States requiring secrecy in the public interest, pursuant to section 3(1) of the APA or other authority?

Answer. The Department of Justice has only one outstanding rule which has been withheld from publication because it involves a function of the United States requiring secrecy in the public interest. This is an organizational order establishing the emergency chain of authority for the performance of the functions of the Attorney General in the event of a civil defense or other emergency which prevents the operation of the Department at the seat of Government.

*Explanation.*—The Executive Office for United States Attorneys, the Executive Office for United States Marshals, the Federal Bureau of Investigation, the Immigration and Naturalization Service, the Board of Parole, the Bureau of Prisons, and other organizational units of the Department have issued extensive directives and instructions to staff and field offices which are not publicly available and in many respects concern the performance of functions which require secrecy in the public interest. However, none of these is a rule which imposes obligations upon members of the public. Rather, they are in the nature of operating instructions to officers and staff of the Department.

10. Question. In what circumstances has your agency refrained from publishing rules where there is involved any matter relating solely to internal agency management, pursuant to section 3(2) of the APA or other authority?

Answer. The Department of Justice "Index to Orders and Memoranda," 1964, lists the directives which have been issued by the Attorney General, the