

Answer. Classified information is not accessible to the general public (Executive Order 10501). Personnel files are controlled by the Civil Service Commission and are not disclosed to the general public. The disclosure of personnel files of AID foreign service personnel is specifically prohibited by statute (see sec. 625(d)(2) of the Foreign Assistance Act and sec. 612 of the Foreign Service Act). The disclosure of trade secrets and certain other confidential information of a business or financial character, unless authorized by law, is prohibited by 18 U.S.C. 1905.

In responding to requests from the general public for examination of agency files and records, AID takes into consideration the nature of the request and the interest of the person making it, e.g., a litigant, research scholar, business competitor, journalist, etc. In this connection AID takes guidance from the Attorney General in his comments on section 3(c) of the Administrative Procedure Act.

"But even matters of official record need be divulged only to 'persons properly and directly concerned'." It is clear that section 3(c) is not intended to open up Government files for general inspection. The phrase 'persons properly and directly concerned' is descriptive of individuals who have a legitimate and valid reason for seeking access to an agency's records. See *United States ex rel. Stowell v. Deming*, 19 F. 2d, 697 (App. D.C., 1927), certiorari denied, 275 U.S. 531. Each agency is the primary judge of whether the person's interest is such as to require it to make its official records available for his inspection.

"An agency may treat matters of official record as 'confidential for good cause found' and upon that ground refuse to make them available for inspection. Information held 'confidential for good cause found' may be either information held confidential by reason of an agency rule issued in advance (for good cause) making specific classes of material confidential, or such information as is held confidential for good cause found under a particular set of facts. The section does not change existing law as to those materials in Government files which have been heretofore treated as confidential. See *Boske v. Comingore*, 177 U.S. 459 (1900); *Boehm v. United States*, 123 F. 2d 791, 805 (C.C.A. 8, 1941)." (Attorney General's Manual on the Administrative Procedure Act (1947), p. 25.)

Question 8. 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 (see sec. 3(a) of the APA)?

Answer. None appear to exist. The statutory requirement (sec. 3(a)) "protects the public from being required to pursue remedies that are not generally known." (Administrative Procedure Act, Legislative History, 79th Cong., 2d sess., S. Doc. 24, p. 198.) When private parties, to pursue remedies or preserve rights, are required to resort to AID organization or procedure, the pertinent information appears in the Federal Register in AID regulations or notices.

Question 9. 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. In no case has AID for reasons of secrecy required in the public interest refrained from publishing "substantive rules adopted as authorized by law" within the meaning of section 3(a)(3) of the act. Such substantive rules are contained in the AID regulations which are uniformly published in the Federal Register. Hence all rules of the Agency defining the rights or obligations of a private person or group of persons are published. Section 3(b) of the act calls for publication of "all rules" which probably embraces more than "substantive rules adopted as authorized by law" within the meaning of section 3(a)(3). But assuming this broader coverage, we are not aware of any instances where AID has refrained because of secrecy requirements from articulating and disclosing any rule.

The AID Manual, comprising 11 looseleaf volumes with thousands of pages, states many requirements which conceivably may be considered "rules" under section 3(b) of the act. Out of this massive compendium only three small manual orders have been classified and thus barred from disclosure to the public. The contents of these particular manual orders, however, are probably not "rules" within the meaning of section 3(b). In any event, they in no way affect the rights or obligations of private parties. Instead, they relate to internal management (M.O.'s 524.2 and 631.4) or are statements of general policy published not for the guidance of the public but for the guidance of AID officials in administering a sensitive foreign program (M.O. 1461.1).

Question 10. 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?