

LATE COMMENTS FROM DEPARTMENTS AND AGENCIES ON FEDERAL PUBLIC RECORDS LAW LEGISLATION

REPLY FROM DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., May 14, 1965.

HON. WILLIAM L. DAWSON,
*Chairman, Committee on Government Operations,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your requests for the views of this Department on H.R. 5012 through H.R. 5021, H.R. 5237, H.R. 5406, H.R. 5520, H.R. 5583, and H.R. 6172, identical bills 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.

For the reasons stated below, we recommend against the enactment of the proposed legislation.

1. These bills blend, and in our view undesirably confuse the basic accountability and informational responsibility of executive agencies to the American people with the quite separate obligation to make available, to those individual members of the public who have business with an agency or are affected by agency action in the conduct of their affairs, the records and other information needed by them in that connection and in the agency's possession. This becomes especially clear by comparing the sweeping and judicially enforceable requirement of the present bills that (with certain strictly limited exceptions) every agency make all its records promptly available to any person with the requirement of section 3 of the Administrative Procedure Act that (with broad exceptions) "matters of official record * * * be made available to persons properly and directly concerned."

Our objection on this score should not be construed as a disinclination to keep the general public properly informed about our activities and to be publicly accountable for our stewardship. On the contrary, it is our very strong policy, and we believe that we have a moral obligation, to make available to the public, as soon as possible, all information concerning programs and activities of the Department and its operating agencies which can be legitimately made available and which will be of use to the public in evaluating the effectiveness of these programs and activities and will aid the public in achieving improved health, education, and welfare.

This policy or obligation, however, the correlative of what is today often referred to as the "right (of the people) to know," should be primarily carried out through our regular program publication and informational services, published reports to the President and to Congress, press conferences, public addresses by agency officials, and the like. It cannot, without forbidding expense, be carried out by sifting the vast material in our files, as the bill seems to envision, to screen out that which cannot be legitimately disclosed, and open the rest to random public inspection as distinguished from inspection by persons properly and directly concerned. No provision has been made in our current budget for the hiring of additional personnel to compensate for the ensuing decrease of man-hours that would be available for employment upon our programs should the proposed legislation be enacted. Moreover, physical segregation of disclosable from nondisclosable material for the purposes of this bill could seriously interfere with the classification and arrangement of file material from the point of view of its greatest effectiveness in serving our program functions.

It should be emphasized in this connection that these bills are in no way concerned, indeed they expressly exclude from their scope, the question of the reach of the investigative power of the Congress vis-a-vis executive agencies.

2. The bills provide for eight closely circumscribed, to some extent overlapping, categories of records that are to be excepted from the duty of disclosure. These, again, are designed to narrow very substantially the ground rules laid down in section 3 of the Administrative Procedure Act, which, besides limiting the right of access to official records to "persons properly and directly concerned" (instead of all and sundry), except therefrom not only records protected from disclosure by other laws but also any records to the extent that there is involved any function of the United States "requiring secrecy in the public interest" or "relating solely to the internal management of an agency" and any "information held confidential for good cause found."