

REPLY FROM FEDERAL TRADE COMMISSION

FEDERAL TRADE COMMISSION,
Washington, D.C., May 12, 1965.

HON. WILLIAM L. DAWSON,
Chairman, Committee on Government Operations,
House of Representatives.

DEAR MR. CHAIRMAN: This is in response to your request for report and comment by the Federal Trade Commission on H.R. 5012, 89th Congress, 1st session, and similar bills; namely, H.R. 5013-5021, H.R. 5237, H.R. 5406, H.R. 5520, H.R. 5583, and H.R. 6172, entitled "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."

These bills would amend section 161 of the Revised Statutes, 5 U.S.C. 22, as amended, under which departments and agencies of the Government are authorized to prescribe regulations for the custody, use, and preservation of their records, papers, and property. The amendments proposed are designed to remove secrecy from Government action and insure the right of access to all public records. With these laudable objectives, the Federal Trade Commission is in full accord.

The Federal Trade Commission, as the committee is well aware, is primarily an enforcement agency with the broad statutory duty to prevent unfair methods of competition and unfair or deceptive acts and practices in commerce. In its adjudicative functions, therefore, the Commission is acting in a quasi-judicial capacity. Certain of the statutes it administers require the Commission to issue rules and regulations and to obtain and maintain compliance with them. To a limited degree, therefore, the Commission is a regulatory agency. The Commission also has specific statutory authority to gather and compile information concerning, and to investigate the organization, business, conduct, practices, and management of corporations, individuals, associations, and partnerships, and from time to time to make public such portions of the information so obtained, except trade secrets and names of customers (disclosure of which is prohibited by statute), as it deems expedient in the public interest. The Commission is empowered by statute to require corporations, partnerships, and individuals, whether or not they are under investigation by the Commission, to furnish information and documents concerning their business and operations.

In carrying out its statutory functions the Commission each year receives thousands of complaints from individuals, business firms, Members of Congress, and others concerning allegedly unfair business practices. Most of the Commission's investigations are initiated as a result of complaints of this nature. While most of these investigations do not result in formal adjudicatory proceedings, the Commission obtains information from many sources, much of which relates to the intimate operations of business firms.

Thus, in the performance of its statutory duties and in its efforts to gain the expertise it is expected to have, the Commission obtains much information, the disclosure of which could do serious harm to those who furnish the information and disclosure of which we do not believe would be in the public interest. Congress itself recognized the potential danger of undue disclosure of information coming into the Commission's possession, by making it a misdemeanor subject to fine and imprisonment for any officer or employee of the Commission to make public any information obtained by the Commission without its authority.

The Commission's existing policy with respect to the disclosure of information concerning its actions is described in detail in the publication of the Commission, *Organization, Procedures and Rules of Practice*, a copy of which is enclosed. (The sections pertaining to public and confidential information are secs. 1.131-1.134, to be found on pp. 26-29 of the publication.) It will be observed that the Commission now makes public, among other things, the pleadings, transcript of testimony, exhibits, and all documents received in evidence or made a part of the record in adjudicative proceedings (except evidence received in camera); petitions for the issuance, amendment, or repeal of rules and regulations issued pursuant to specific statutory authority, including petitions for exceptions; records of hearings in all rulemaking proceedings; agreements containing orders to cease and desist after acceptance by the Commission; and reports of compliance. The Commission just recently announced that it will publish texts or digests of advisory opinions which have general interest, subject to statutory restrictions against disclosure of trade secrets or names of customers and to considerations of the confidentiality of facts involved and of meritorious objec-