The House Report also emphasized that:

It would also include information which is given to an agency in confidence, since a citizen must be able to confide in his Government. Moreover, where the Government has obligated itself in good faith not to disclose documents or information which it receives, it should be able to honor such obligations.

The Attorney General's memorandum has interpreted this exemption as follows:

An important consideration should be noted as to formulae, designs, drawings, research data, etc., which, although set forth on pieces of paper, are significant not as records but as items of valuable property. These may have been developed by or for the Government at great expense. There is no indication anywhere in the consideration of this legislation that the Congress intended by subsection (c), to give away such property to every citizen or alien who is willing to pay the price of making a copy. Where similar property in private hands would be held in confidence, such property in the hands of the United States should be covered under exemption (e)(4).

Comment b to section 757 of the Restatement of Torts defines a "trade secret" as follows:

A trade secret may consist of any formula pattern, device, or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.

This exemption is the one most frequently in issue with respect to data and information in FDA files for which disclosure is sought. Much of it has been submitted to FDA in petitions and applications or on a voluntary basis with the understanding that it would be retained as confidential, and some of it is still highly valuable in that it gives the company having it a competitive advantage over others who are required by law to obtain it in order to receive FDA approval of a product or ingredient prior to marketing.

5. *Interagency or intra-agency memorandums or letters which would not be available by law to a private party in litigation with the agency.* The House Report explained this exemption as follows:

Agency witnesses argued that a full and frank exchange of opinions would be impossible if all internal communications were made public. They contended, and with merit, that advice from staff assistants and the exchange of ideas among agency personnel would not be completely frank if they were forced to "operate in a fishbowl." Moreover, a Government agency cannot always operate effectively if it is required to disclose documents or information which it has received or generated before it completes the process of awarding a contract or issuing an order, decision or regulation. This clause is intended to exempt from disclosure this and other information and records wherever necessary without, at the same time, permitting indiscriminate administrative secrecy * * *.

The Attorney General's memorandum further discussed it:

Conversely, internal communications which would not routinely be available to a party to litigation with the agency, such as internal drafts, memoranda between officials or agencies, opinions and interpretations prepared by agency staff personnel or consultants for the use of the agency, and records of the deliberations of the agency or staff groups, remain exempt so that free exchange of ideas will not be inhibited. As the President stated upon signing the new law, "officials within Government must be able to communicate with one another fully and frankly without publicity."

6. *Personnel and medical files.* This exemption has raised no difficulties with FDA.

7. *Investigatory files compiled for law enforcement purposes except to the extent available by law to a private party.* The House Report stated that this exemption includes enforcement of "all kinds of laws, labor and securities laws as well as criminal laws," and thus includes investigatory files compiled for enforcement of all the laws administered by FDA. It does not include, however, the enforcement action taken as the result of the investigation, whether it be formal or informal.

8. *Information concerning financial institutions.* This exemption does not appear to be relevant to FDA.

9. *Information concerning wells.* This exemption also does not appear to be relevant to FDA.

In addition to these specific exemptions under the Freedom of Information Act, other Federal laws also limit the availability to the public of information con-