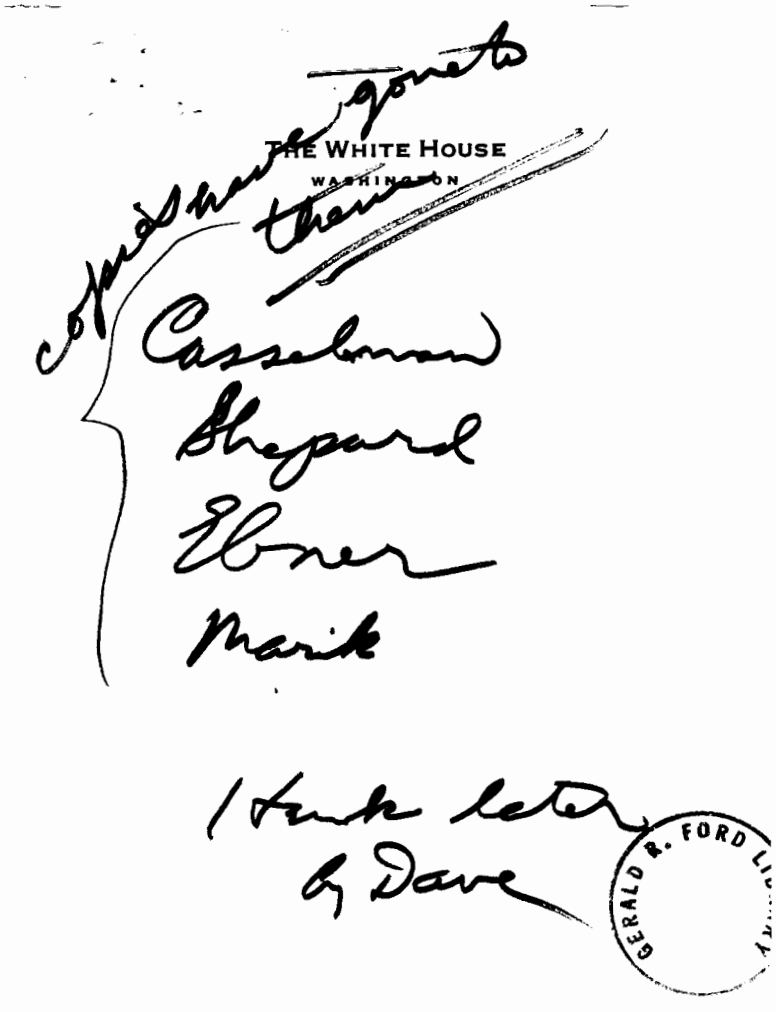
The original documents are located in Box 17, folder "Freedom of Information - Legislation (1)" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.



DOMESTIC COUNCIL COMMITTEE ON THE RIGHT OF PRIVACY

WASHINGTON, D.C. 20504

September 24, 1974

MEMORANDUM FOR: Mr. Stanley Ebner

FROM: Douglas W. Metz

SUBJECT: Freedom of Information Act Amendments

The President should approve this bill, which in its original form received overwhelming support in both Houses of the Congress. The Conferees, as evidenced by their letter to the President of September 23, have taken significant steps to meet the concerns raised by the President in his letter to them of August 20. There is no convincing evidence that a better bill could be obtained in a new Congress; nor is it likely that the Conferees could be persuaded to reopen their deliberations. Many in the Congress and the general public will regard the President's response to the action of the Conferees as a test of his sincere and strongly professed commitment to greater openness in government and to conciliation and compromise with the Congress.

The bill clarifies Congressional intent regarding the original Freedom of Information Act and subsequent court interpretations. The dominant Congressional concern is to make clear that agencies cannot, with impunity and without ultimate court review, withhold information simply by classifying it or including it in a law enforcement file. The amendments and the report language provide a process for court review de novo consistent with the intent of the original Freedom of Information Act. It permits the court, if necessary, to examine in camera disputed records to determine whether they are exempt under any of the nine categories of existing law. Judges, of course, like all Federal employees, are subject to criminal penalties for unauthorized disclosures of classified information. It would continue to permit exemption of CIA-type records and all other records specifically required by statute to be kept confidential. National defense and foreign policy files can be exempted as specifically authorized by criteria established by an Executive order to be kept secret and, in fact, properly classified pursuant to such Executive order. The prospect of abuses of judicial discretion with the remedy of legislative amendment and/or review via appeal appears less a risk than the danger of executive "cover-up" and abuses of power immune from public scrutiny and judicial review.

FBI-type files can also be exempted under any one of six broad criteria spelled out in the amendments. For the first time the FBI can point to a statute which expressly permits it to guarantee confidentiality of identity to informants. The necessity to evaluate particularly voluminous files in response to subsequent disclosure requests can be obviated by internal regulations which make simple changes in record-keeping and record classification practices.

The remaining provisions of the bill dealing with fees, time limits, and employee sanctions are less controversial because of changes made by the Conferees which are more acceptable to the agencies. In assessing agency comments, it should be kept in mind that agency convenience and perpetuation of poor record-keeping practices are not the objectives of the bill. Most agencies opposed the original Act.

In summary, the bill should be approved since it strikes a reasonable balance between the public's right to know and the interest of government in protecting the confidentiality of sensitive information at a time of deep public concern over actual and alleged abuses resulting from secrecy in government. More importantly, the bill assures ultimate court review, if necessary, of the actions of any agency which unlawfully withholds information from the public. No agency, without final accountability to the courts under the law, would be immune from citizen challenge of arbitrary and capricious withholding of non-confidential, non-secret information under stamps and labels of "national defense", "foreign policy", and "law enforcement".

DWM/fme

cc: Philip W. Buchen
William E. Casselman, II
Malcolm Hawk
Robert Marik
Pat O'Donnell
Geoffrey Shepard

Ken
FYI

DOMESTIC COUNCIL COMMITTEE ON THE RIGHT OF PRIVACY

WASHINGTON, D.C. 20504

September 24, 1974

MEMORANDUM FOR: Mr. Stanley Ebner

FROM: Douglas W. Metz

SUBJECT: Freedom of Information Act Amendments

The President should approve this bill, which in its original form received overwhelming support in both Houses of the Congress. The Conferees, as evidenced by their letter to the President of September 23, have taken significant steps to meet the concerns raised by the President in his letter to them of August 20. There is no convincing evidence that a better bill could be obtained in a new Congress; nor is it likely that the Conferees could be persuaded to reopen their deliberations. Many in the Congress and the general public will regard the President's response to the action of the Conferees as a test of his sincere and strongly professed commitment to greater openness in government and to conciliation and compromise with the Congress.

The bill clarifies Congressional intent regarding the original Freedom of Information Act and subsequent court interpretations. The dominant Congressional concern is to make clear that agencies cannot, with impunity and without ultimate court review, withhold information simply by classifying it or including it in a law enforcement file. The amendments and the report language provide a process for court review de novo consistent with the intent of the original Freedom of Information Act. It permits the court, if necessary, to examine in camera disputed records to determine whether they are exempt under any of the nine categories of existing law. Judges, of course, like all Federal employees, are subject to criminal penalties for unauthorized disclosures of classified information. It would continue to permit exemption of CIA-type records and all other records specifically required by statute to be kept confidential. National defense and foreign policy files can be exempted as specifically authorized by criteria established by an Executive order to be kept secret and, in fact, properly classified pursuant to such Executive order. The prospect of abuses of judicial discretion with the remedy of legislative amendment and/or review via appeal appears less a risk than the danger of executive "cover-up" and abuses of power immune from public scrutiny and judicial review.

FBI-type files can also be exempted under any one of six broad criteria spelled out in the amendments. For the first time the FBI can point to a statute which expressly permits it to guarantee confidentiality of identity to informants. The necessity to evaluate particularly voluminous files in response to subsequent disclosure requests can be obviated by internal regulations which make simple changes in record-keeping and record classification practices.

The remaining provisions of the bill dealing with fees, time limits, and employee sanctions are less controversial because of changes made by the Conferees which are more acceptable to the agencies. In assessing agency comments, it should be kept in mind that agency convenience and perpetuation of poor record-keeping practices are not the objectives of the bill. Most agencies opposed the original Act.

In summary, the bill should be approved since it strikes a reasonable balance between the public's right to know and the interest of government in protecting the confidentiality of sensitive information at a time of deep public concern over actual and alleged abuses resulting from secrecy in government. More importantly, the bill assures ultimate court review, if necessary, of the actions of any agency which unlawfully withholds information from the public. No agency, without final accountability to the courts under the law, would be immune from citizen challenge of arbitrary and capricious withholding of non-confidential, non-secret information under stamps and labels of "national defense", "foreign policy", and "law enforcement".

DWM/fme

cc: Philip W. Buchen
William E. Casselman, II
Malcolm Hawk
Robert Marik
Pat O'Donnell
Geoffrey Shepard

Geoff
FYI

DOMESTIC COUNCIL COMMITTEE ON THE RIGHT OF PRIVACY

WASHINGTON, D.C. 20504

September 24, 1974

MEMORANDUM FOR: Mr. Stanley Ebner

FROM: Douglas W. Metz

SUBJECT: Freedom of Information Act Amendments

The President should approve this bill, which in its original form received overwhelming support in both Houses of the Congress. The Conferees, as evidenced by their letter to the President of September 23, have taken significant steps to meet the concerns raised by the President in his letter to them of August 20. There is no convincing evidence that a better bill could be obtained in a new Congress; nor is it likely that the Conferees could be persuaded to reopen their deliberations. Many in the Congress and the general public will regard the President's response to the action of the Conferees as a test of his sincere and strongly professed commitment to greater openness in government and to conciliation and compromise with the Congress.

The bill clarifies Congressional intent regarding the original Freedom of Information Act and subsequent court interpretations. The dominant Congressional concern is to make clear that agencies cannot, with impunity and without ultimate court review, withhold information simply by classifying it or including it in a law enforcement file. The amendments and the report language provide a process for court review de novo consistent with the intent of the original Freedom of Information Act. It permits the court, if necessary, to examine in camera disputed records to determine whether they are exempt under any of the nine categories of existing law. Judges, of course, like all Federal employees, are subject to criminal penalties for unauthorized disclosures of classified information. It would continue to permit exemption of CIA-type records and all other records specifically required by statute to be kept confidential. National defense and foreign policy files can be exempted as specifically authorized by criteria established by an Executive order to be kept secret and, in fact, properly classified pursuant to such Executive order. The prospect of abuses of judicial discretion with the remedy of legislative amendment and/or review via appeal appears less a risk than the danger of executive "cover-up" and abuses of power immune from public scrutiny and judicial review.

FBI-type files can also be exempted under any one of six broad criteria spelled out in the amendments. For the first time the FBI can point to a statute which expressly permits it to guarantee confidentiality of identity to informants. The necessity to evaluate particularly voluminous files in response to subsequent disclosure requests can be obviated by internal regulations which make simple changes in record-keeping and record classification practices.

The remaining provisions of the bill dealing with fees, time limits, and employee sanctions are less controversial because of changes made by the Conferees which are more acceptable to the agencies. In assessing agency comments, it should be kept in mind that agency convenience and perpetuation of poor record-keeping practices are not the objectives of the bill. Most agencies opposed the original Act.

In summary, the bill should be approved since it strikes a reasonable balance between the public's right to know and the interest of government in protecting the confidentiality of sensitive information at a time of deep public concern over actual and alleged abuses resulting from secrecy in government. More importantly, the bill assures ultimate court review, if necessary, of the actions of any agency which unlawfully withholds information from the public. No agency, without final accountability to the courts under the law, would be immune from citizen challenge of arbitrary and capricious withholding of non-confidential, non-secret information under stamps and labels of "national defense", "foreign policy", and "law enforcement".

DWM/fme

cc: Philip W. Buchen
William E. Casselman, II
Malcolm Hawk
Robert Marik
Pat O'Donnell
Geoffrey Shepard

Wednesday 9/25/74

11:15 About 20 minutes ago Geoff Shepard, Bill Timmons and Ken Lazarus put their heads together and are working on the Freedom of Information Act ----- so it's being taken care of.

THE WHITE HOUSE

WASHINGTON

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

September 24, 1974

FOR: Philip W. Buchen

FROM: Kenneth A. Lazarus

SUBJECT: H.R. 12471, Amendments to the Freedom of Information Act.

As you likely are aware, House and Senate conferees have recently concluded action on H.R. 12471, the amendments to the Freedom of Information Act. However, only four of the seven House conferees and four of the seven Senate conferees have signed the Conference Report to date.

It is my understanding that those who have not yet signed are awaiting some declaratory relief from the President with respect to the acceptability of the proposed legislation. Their opposition to the Conference Report is, of course, essential to sustaining a veto should that course be pursued.

Attached are copies of the President's letter of August 24, to each of the conferees and the proposed Conference Report and Statement of Managers. As it is my understanding that you will be advising the President in this regard, set forth below is a rather distilled analysis of certain central features of the bill.

Throughout the Conference, the primary focus has been on four issues:

1. Sanctions. In his letter to the conferees, the President objected to the sanction provision applicable to government employees in violation of the Act because (1) it placed the decision whether to impose the sanction in the judiciary and (2) it could have an inhibiting effect upon the effective conduct of official duties because of the potential personal liability.

The sanction provision was changed considerably at a meeting of the conferees subsequent to the delivery of the President's letter. As agreed to in conference, the provision now vests the authority to impose the sanction in the Civil Service Commission and not in the judiciary. Second, the standard has been elevated. Now an employee can only be disciplined if his action is found to be "arbitrary and capricious.

In my view, these changes transform the provision into a paper tiger. It will be very difficult to prove that a decision was arbitrary and capricious primarily because of the administrative procedures that have been developed by the agencies. When a requester sends in a request, a decision is initially made whether to grant or deny the request. If denied, the requester can then appeal to the department head or his designee. Before this person can deny the request, he must consult the Justice Department's Freedom of Information Committee. Because of all these procedures and built-in safeguards, it will be extremely difficult to show that a decision was arbitrary and capricious. Accordingly, the sanction will hardly, if ever, be used.

2. Exemption 7 -- Investigatory Files. The President pointed out two problems with respect to the amendment to this exemption which authorizes the withholding of investigatory files compiled for law enforcement purposes: (1) the amendment could threaten the right to privacy; and (2) the amendment could hamper the ability of law enforcement agencies to maintain the identity of a source in confidence.

In the conference, two changes were made to the bill. The first deleted the word "clearly" in the phrase an agency may withhold records that "constitute a (clearly) unwarranted invasion of privacy." The second change is more significant. It authorizes a criminal law enforcement agency to withhold all confidential information furnished by a confidential source. In effect, this grants a nearly blanket exemption to the FBI because its investigative reports are compiled almost entirely from accounts of sources. Accordingly, I believe that this amendment satisfies the concerns of the FBI.

3. Time Limits. In his letter, the President asked that the time limits for agency action be made more flexible. In response to this request, the conferees have adopted a provision under which a court can grant additional time to an agency to respond to a request. In my view, this amendment grants the needed flexibility.

4. In Camera Review of Classified Documents. This is the only area of the bill which now presents any real controversy. The President pointed out that he could not accept a judicial review of classification which could risk exposure of our military or intelligence secrets. The House bill and the Senate bill contained virtually identical provisions relating to in camera review of classified documents. As agreed to by the conferees, the bill provides that the court (1) may determine de novo whether classified documents are properly classified and (2) may examine the documents in camera in making its de novo determination.

Because both bills were virtually identical on this point, the conferees would not agree to consider any amendments to the provision. However, they did put language in the Conference Report designed to ameliorate some of the concerns with such a provision. The Report now provides that (1) in camera inspection of the documents should not be automatic -- the judge should look at the documents only if he cannot determine the propriety of the classification on the basis of the affidavits and (2) an agency affidavit avering that the document is properly classified shall be entitled to substantial weight.

While these statements in the Conference Report go part way in addressing the concerns of the President, they do not entirely satisfy these concerns. In his letter to the Conferees, the President stated that he could accept a provision that included (1) an express presumption that the classification was proper and (2) a standard of arbitrary, capricious or without a reasonable basis governing the judge's review of the classified documents.

Closing Note

A veto of the subject bill would obviously have political repercussions. If the possibility of a veto does exist, however, I would suggest that an effort be made to keep uncommitted conferees from signing the Report in order to preserve the possibility of upholding such a veto.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

September 24, 1974

FOR: Philip W. Buchen

FROM: Kenneth A. Lazarus

SUBJECT: H.R. 12471, Amendments to the Freedom of Information Act.

As you likely are aware, House and Senate conferees have recently concluded action on H.R. 12471, the amendments to the Freedom of Information Act. However, only four of the seven House conferees and four of the seven Senate conferees have signed the Conference Report to date.

It is my understanding that those who have not yet signed are awaiting some declaratory relief from the President with respect to the acceptability of the proposed legislation. Their opposition to the Conference Report is, of course, essential to sustaining a veto should that course be pursued.

Attached are copies of the President's letter of August 24, to each of the conferees and the proposed Conference Report and Statement of Managers. As it is my understanding that you will be advising the President in this regard, set forth below is a rather distilled analysis of certain central features of the bill.

Throughout the Conference, the primary focus has been on four issues:

1. Sanctions. In his letter to the conferees, the President objected to the sanction provision applicable to government employees in violation of the Act because (1) it placed the decision whether to impose the sanction in the judiciary and (2) it could have an inhibiting effect upon the effective conduct of official duties because of the potential personal liability.

The sanction provision was changed considerably at a meeting of the conferees subsequent to the delivery of the President's letter. As agreed to in conference, the provision now vests the authority to impose the sanction in the Civil Service Commission and not in the judiciary. Second, the standard has been elevated. Now an employee can only be disciplined if his action is found to be "arbitrary and capricious."

In my view, these changes transform the provision into a paper tiger. It will be very difficult to prove that a decision was arbitrary and capricious primarily because of the administrative procedures that have been developed by the agencies. When a requester sends in a request, a decision is initially made whether to grant or deny the request. If denied, the requester can then appeal to the department head or his designee. Before this person can deny the request, he must consult the Justice Department's Freedom of Information Committee. Because of all these procedures and built-in safeguards, it will be extremely difficult to show that a decision was arbitrary and capricious. Accordingly, the sanction will hardly, if ever, be used.

2. Exemption 7 -- Investigatory Files. The President pointed out two problems with respect to the amendment to this exemption which authorizes the withholding of investigatory files compiled for law enforcement purposes: (1) the amendment could threaten the right to privacy; and (2) the amendment could hamper the ability of law enforcement agencies to maintain the identity of a source in confidence.

In the conference, two changes were made to the bill. The first deleted the word "clearly" in the phrase an agency may withhold records that "constitute a (clearly) unwarranted invasion of privacy." The second change is more significant. It authorizes a criminal law enforcement agency to withhold all confidential information furnished by a confidential source. In effect, this grants a nearly blanket exemption to the FBI because its investigative reports are compiled almost entirely from accounts of sources. Accordingly, I believe that this amendment satisfies the concerns of the FBI.

3. Time Limits. In his letter, the President asked that the time limits for agency action be made more flexible. In response to this request, the conferees have adopted a provision under which a court can grant additional time to an agency to respond to a request. In my view, this amendment grants the needed flexibility.

4. In Camera Review of Classified Documents. This is the only area of the bill which now presents any real controversy. The President pointed out that he could not accept a judicial review of classification which could risk exposure of our military or intelligence secrets. The House bill and the Senate bill contained virtually identical provisions relating to in camera review of classified documents. As agreed to by the conferees, the bill provides that the court (1) may determine de novo whether classified documents are properly classified and (2) may examine the documents in camera in making its de novo determination.

Because both bills were virtually identical on this point, the conferees would not agree to consider any amendments to the provision. However, they did put language in the Conference Report designed to ameliorate some of the concerns with such a provision. The Report now provides that (1) in camera inspection of the documents should not be automatic -- the judge should look at the documents only if he cannot determine the propriety of the classification on the basis of the affidavits and (2) an agency affidavit avering that the document is properly classified shall be entitled to substantial weight.

While these statements in the Conference Report go part way in addressing the concerns of the President, they do not entirely satisfy these concerns. In his letter to the Conferees, the President stated that he could accept a provision that included (1) an express presumption that the classification was proper and (2) a standard of arbitrary, capricious or without a reasonable basis governing the judge's review of the classified documents.

Closing Note

A veto of the subject bill would obviously have political repercussions. If the possibility of a veto does exist, however, I would suggest that an effort be made to keep uncommitted conferees from signing the Report in order to preserve the possibility of upholding such a veto.

cc: Mr. Phillip Areeda
Mr. William Casselman

Enclosures

KAL:dlm

THE WHITE HOUSE

WASHINGTON
August 20, 1974

Dear Bill:

I appreciate the time you have given me to study the amendments to the Freedom of Information Act (H.R. 12471) presently before you, so that I could provide you my personal views on this bill.

I share your concerns for improving the Freedom of Information Act and agree that now, after eight years in existence, the time is ripe to reassess this profound and worthwhile legislation. Certainly, no other recent legislation more closely encompasses my objectives for open Government than the philosophy underlying the Freedom of Information Act.

Although many of the provisions that are now before you in Conference will be expensive in their implementation, I believe that most would more effectively assure to the public an open Executive branch. I have always felt that administrative burdens are not by themselves sufficient obstacles to prevent progress in Government, and I will therefore not comment on those aspects of the bill.

There are, however, more significant costs to Government that would be exacted by this bill -- not in dollar terms, but relating more fundamentally to the way Government, and the Executive branch in particular, has and must function. In evaluating the costs, I must take care to avoid seriously impairing the Government we all seek to make more open. I am concerned with some of the provisions which are before you as well as some which I understand you may not have considered. I want to share my concerns with you so that we may accommodate our reservations in achieving a common objective.

A provision which appears in the Senate version of the bill but not in the House version requires a court, whenever its decision grants withheld documents to a complainant, to identify the employee responsible for the

Sanction provision

withholding and to determine whether the withholding was "without (a) reasonable basis in law" if the complainant so requests. If such a finding is made, the court is required to direct the agency to suspend that employee without pay or to take disciplinary or corrective action against him. Although I have doubts about the appropriateness of diverting the direction of litigation from the disclosure of information to career-affecting disciplinary hearings about employee conduct, I am most concerned with the inhibiting effect upon the vigorous and effective conduct of official duties that this potential personal liability will have upon employees responsible for the exercise of these judgments. Neither the best interests of Government nor the public would be served by subjecting an employee to this kind of personal liability for the performance of his official duties. Any potential harm to successful complainants is more appropriately rectified by the award of attorney fees to him. Furthermore, placing in the judiciary the requirement to initially determine the appropriateness of an employee's conduct and to initiate discipline is both unprecedented and unwise. Judgments concerning employee discipline must, in the interests of both fairness and effective personnel management, be made initially by his supervisors and judicial involvement should then follow in the traditional form of review.

There are provisions in both bills which would place the burden of proof upon an agency to satisfy a court that a document classified because it concerns military or intelligence (including intelligence sources and methods) secrets and diplomatic relations is, in fact, properly classified, following an in camera inspection of the document by the court. If the court is not convinced that the agency has adequately carried the burden, the document will be disclosed. I simply cannot accept a provision that would risk exposure of our military or intelligence secrets and diplomatic relations because of a judicially perceived failure to satisfy a burden of proof. My great respect for the courts does not prevent me from observing that they do not ordinarily have the background and expertise to gauge the ramifications that a release of a document may have upon our national security. The Constitution commits this responsibility and authority

Sanction provision

in camera review of classified documents

to the President. I understand that the purpose of this provision is to provide a means whereby improperly classified information may be detected and released to the public. This is an objective I can support as long as the means selected do not jeopardize our national security interests. I could accept a provision with an express presumption that the classification was proper and with in camera judicial review only after a review of the evidence did not indicate that the matter had been reasonably classified in the interests of our national security. Following this review, the court could then disclose the document if it finds the classification to have been arbitrary, capricious, or without a reasonable basis. It must also be clear that this procedure does not usurp my Constitutional responsibilities as Commander-in-Chief. I recognize that this provision is technically not before you in Conference, but the differing provisions of the bills afford, I believe, grounds to accommodate our mutual interests and concerns.

in camera review of classified documents

The Senate but not the House version amends the exemption concerning investigatory files compiled for law enforcement purposes. I am concerned with any provision which would reduce our ability to effectively deal with crime. This amendment could have that effect if the sources of information or the information itself are disclosed. These sources and the information by which they may be identified must be protected in order not to severely hamper our efforts to combat crime. I am, however, equally concerned that an individual's right to privacy would not be appropriately protected by requiring the disclosure of information contained in an investigatory file about him unless the invasion of individual privacy is clearly unwarranted. Although I intend to take action shortly to address more comprehensively my concerns with encroachments upon individual privacy, I believe now is the time to preclude the Freedom of Information Act from disclosing information harmful to the privacy of individuals. I urge that you strike the words "clearly unwarranted" from this provision.

Exemption 7 - FBI files

Finally, while I sympathize with an individual who is effectively precluded from exercising his right under the Freedom of Information Act because of the substantial costs of litigation, I hope that the amendments will make it clear that corporate interests will not be subsidized

in their attempts to increase their competitive position by using this Act. I also believe that the time limits for agency action are unnecessarily restrictive in that they fail to recognize several valid examples of where providing flexibility in several specific instances would permit more carefully considered decisions in special cases without compromising the principle of timely implementation of the Act.

Again, I appreciate your cooperation in affording me this time and I am hopeful that the negotiations between our respective staffs which have continued in the interim will be successful.

I have stated publicly and I reiterate here that I intend to go more than halfway to accommodate Congressional concerns. I have followed that commitment in this letter, and I have attempted where I cannot agree with certain provisions to explain my reasons and to offer a constructive alternative. Your acceptance of my suggestions will enable us to move forward with this progressive effort to make Government still more responsive to the People.

Sincerely,

Honorable William S. Moorhead
House of Representatives
Washington, D. C. 20515

93d CONGRESS
2d Session

SENATE

REPORT
No. ____

FREEDOM OF INFORMATION ACT AMENDMENTS

---Ordered to be printed

Mr. KENNEDY, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H. R. 12471]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill ~~joint resolution~~ (H. R. 12471) to amend section 552 of title 5, United States Code, known as the Freedom of Information Act,

having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

~~And the Senate agree to the same~~

U.S. GOVERNMENT PRINTING OFFICE 97-790-h

H. R. 12471 -- FREEDOM OF INFORMATION ACT AMENDMENTS

That (a) the fourth sentence of section 552(a)(2) of title 5, United States Code, is amended to read as follows:

"Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable , in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication.".

(b)(1) Section 552(a)(3) of title 5, United States Code, is amended to read as follows: .

"(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, upon any request for records which (A) reasonably describes such records and (B) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person."

(2) Section 552(a) of title 5, United States Code, is amended by redesignating paragraph (4), and all references thereto, as paragraph (5) and by inserting immediately after paragraph (3) the following new paragraph:

"(4)(A) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying a uniform schedule of fees applicable to all constituent units of such agency. Such fees shall be limited to reasonable standard charges for document search and duplication and provide for recovery of only the direct costs of such search and duplication. Documents shall be furnished without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

"(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action.

"(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

"(D) Except as to cases the court considers of greater importance, proceedings before the district court, as authorized by this subsection, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

"(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

"(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Civil Service Commission shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily

responsible for the withholding. The Commission, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Commission recommends.

"(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.".

(c) Section 552(a) of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall--

"(i) determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

"(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole

or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

"(B) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this subparagraph, 'unusual circumstances' means, but only to the extent reasonably necessary to the proper processing of the particular request--

"(i) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

"(ii) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

"(iii) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

"(C) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request."

SEC. 2. (a) Section 552(b)(1) of title 5, United States Code, is amended to read as follows:

"(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;"

(b) Section 552(b)(7) of title 5, United States Code, is amended to read as follows:

"(7) investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair

trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority, in the course of a criminal or lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;"

(c) Section 552(b) of title 5, United States Code, is amended by adding at the end the following: "Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.".

SEC. 3. Section 552 of title 5, United States Code, is amended by adding at the end thereof the following new subsections:

"(d) On or before March 1 of each calendar year, each agency shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report shall include--

"(1) the number of determinations made by such agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

"(2) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

"(3) the names and titles or positions of each person responsible for the denial of records requested under this section, and the number of instances of participation for each;

"(4) the results of each proceeding conducted pursuant to subsection (a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

"(5) a copy of every rule made by such agency regarding this section;

"(6) a copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section; and

"(7) such other information as indicates efforts to administer fully this section.

"The Attorney General shall submit an annual report on or before March 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of

such case, and the cost, fees, and penalties assessed under subsections (a)(4)(E), (F), and (G). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

"(e) For purposes of this section, the term 'agency' as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

SEC. 4. The amendments made by this Act shall take effect on the ninetieth day beginning after the date of enactment of this Act.

And the Senate agree to the same.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the Senate bill (H.R. 12471) to amend section 552 of title 5, United States Code, known as the Freedom of Information Act,

submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

U.S. GOVERNMENT PRINTING OFFICE 56-238-A

STATEMENT OF MANAGERS -- H. R. 12471

Index Publication

The House bill added language to the present Freedom of Information law to require the publication and distribution (by sale or otherwise) of agency indexes identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, which is required by 5 U.S.C. § 552(a)(2) to be made available or published. This includes final opinions, orders, agency statements of policy and interpretations not published in the Federal Register, and administrative staff manuals and agency staff instructions that affect the public unless they are otherwise published and copies offered for sale to the public. Such published indexes would be required for the July 4, 1967, period to date. Where agency indexes are now published by commercial firms, as they are in some instances, such publication would satisfy the requirements of this amendment so long as they are made readily available for public use by the agency.

The Senate amendment contained similar provisions, indicating that the publication of indexes should be on a quarterly or more frequent basis, but provided that if an agency determined by an order published in the Federal Register that its publication of any index would be "unnecessary and impracticable," it would not actually be required to publish the index. However, it would nonetheless be required to provide copies of such index on request at a cost comparable to that charged had the index been published.

The conference substitute follows the Senate amendment, except that if the agency determines not to publish its index, it shall provide copies on request to any person at a cost not to exceed the direct cost of duplication.

Identifiable Records

Present law requires that a request for information from an agency be for "identifiable records." The House bill provided that the request only "reasonably describe" the records being sought.

The Senate amendment contained similar language, but added a provision that when agency records furnished a person are demonstrated to be of "general public concern," the agency shall also make them available for public inspection and purchase, unless the agency can demonstrate that they could subsequently be denied to another individual under exemptions contained in subsection (b) of the Freedom of Information Act.

The conference substitute follows the House bill. With respect to the Senate proviso dealing with agency records of "general public interest," the conferees wish to make clear such language was eliminated only because they conclude that all agencies are presently obligated under the Freedom of Information Act to pursue such a policy and that all agencies should effect this policy through regulation.

Search and Copying Fees

The Senate amendment contained a provision, not included in the House bill, directing the Director of the Office of Management and Budget to promulgate regulations establishing a uniform schedule of fees for agency search and copying of records made available to a person upon request under the law. It also provided that an agency could furnish the records requested without charge or at a reduced charge if it determined that such action would be in the public interest. It further provided that no fees should ordinarily be charged if the person requesting the records was an indigent, if such fees would amount to less than $3, if the records were not located by the agency, or if they were determined to be exempt from disclosure under subsection (b) of the law.

The conference substitute follows the Senate amendment, except that each agency would be required to issue its own regulations for the recovery of only the direct costs of search and duplication--not including examination or review of records--instead of having such regulations promulgated by the Office of Management and Budget. In addition, the conference substitute retains the agency's discretionary public interest waiver authority but eliminates the specific categories of situations where fees should not be charged.

By eliminating the list of specific categories, the conferees do not intend to imply that agencies should actually charge fees in those categories. Rather, they felt, such

matters are properly the subject for individual agency determination in regulations implementing the Freedom of Information Act. The conferees intend that fees should not be used for the purpose of discouraging requests for information or as obstacles to disclosure of requested information.

Court Review

The House bill clarifies the present Freedom of Information law with respect to de novo review requirements by Federal courts under section 552(a)(3) by specifically authorizing the court to examine in camera any requested records in dispute to determine whether the records are--as claimed by an agency--exempt from mandatory disclosure under any of the nine categories of section 552(b) of the law.

The Senate amendment contained a similar provision authorizing in camera review by Federal courts and added another provision, not contained in the House bill, to authorize Freedom of Information suits to be brought in the Federal courts in the District of Columbia, even in cases where the agency records were located elsewhere.

The conference substitute follows the Senate amendment, providing that in determining de novo whether agency records have been properly withheld, the court may examine records in camera in making its determination under any of the nine categories of exemptions under section 552(b) of the law. In

Environmental Protection Agency v. Mink, et al., 410 U.S. 73 (1973), the Supreme Court ruled that in camera inspection of documents withheld under section 552(b)(1) of the law, authorizing the withholding of classified information, would ordinarily be precluded in Freedom of Information cases, unless Congress directed otherwise. H. R. 12471 amends the present law to permit such in camera examination at the discretion of the court. While in camera examination need not be automatic, in many situations it will plainly be necessary and appropriate. Before the court orders in camera inspection, The government should be given the opportunity to establish by means of all testimony or detailed affidavits that the documents are clearly exempt from disclosure. The burden remains on the government under this Act.

Response to Complaints

The House bill required that the defendant to a complaint under the Freedom of Information law serve a responsive pleading within 20 days after service, unless the court directed otherwise for good cause shown.

The Senate amendment contained a similar provision, except that it would give the defendant 40 days to file an answer.

The conference substitute would give the defendant 30 days to respond, unless the court directs otherwise for good cause shown.

Expedited Appeals

The Senate amendment included a provision, not contained in the House bill, to give precedence on appeal to cases brought under the Freedom of Information law, except as to cases on the docket which the court considers of greater importance.

The conference substitute follows the Senate amendment.

Assessment of Attorney's Fees and Costs

The House bill provided that a Federal court may, in its discretion, assess reasonable attorneys fees and other litigation costs reasonably incurred by the complainant in Freedom of Information cases in which the Federal Government had not prevailed.

The Senate amendment also contained a similar provision applying to cases in which the complainant had "substantially prevailed," but added certain criteria for consideration by the court in making such awards, including the benefit to the public deriving from the case, the commercial benefit to the complainant and the nature of his interest in the Federal records sought, and whether the government's withholding of the records sought had "a reasonable basis in law."

The conference substitute follows the Senate amendment, except that the statutory criteria for court award of attorney's fees and litigation costs were eliminated. By eliminating these criteria, the conferees do not intend to make the award of attorneys fees automatic nor to preclude the courts, in exercising their discretion whether to award

such fees, to take into consideration such criteria. Instead, the conferees believe that because the existing body of law on the award of attorneys fees recognizes such factors, a statement of the criteria may be too delimiting and is unnecessary. It is intended that this section shall apply to cases pending on, as well as filed after, the effective date of this Act.

Sanction

The Senate amendment contained a provision, not included in the House bill, authorizing the court in Freedom of Information Act cases to impose a sanction of up to 60 days suspension from employment against a Federal employee or official who the court found to have been responsible for withholding the requested records without reasonable basis in law.

The conference substitute follows the Senate amendment, except that the court is authorized to make a finding whether the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding. If the court so finds, the Civil Service Commission must promptly initiate a proceeding to determine whether disciplinary action is warranted against the responsible officer or employee. The Commission's findings and recommendations are to be submitted to the appropriate administrative authority and to the responsible official or employee, and that agency shall promptly take the disciplinary action recommended by the Commission. This section applies to all persons employed by agencies under this Act.

Administrative Deadlines

The House bill required that an agency make a determination whether or not to comply with a request for records within 10 days (excepting Saturdays, Sundays, and legal public holidays) and to notify the person making the request of such determination and the reasons therefor, and the right of such person to appeal any adverse determination to the head of the agency. It also required that agencies make a final determination on any appeal of an adverse determination within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the date of receipt of the appeal by the agency. Further, any person would be deemed to have exhausted his administrative remedies if the agency fails to comply with either of the two time deadlines.

The Senate amendment contained similar provisions but authorized certain other administrative actions to extend these deadlines for another 30 working days under specified types of situations, if requested by an agency head and approved by the Attorney General. It also would grant an agency, under specified "unusual circumstances", a 10-working-day extension upon notification to the person requesting the records. In addition, an agency could transfer part of the number of days from one category to another and authorize the court to allow still additional time for the agency to respond to the request. The Senate amendment also provided that any agency's notification of denial of any re-

quest for records set forth the names and titles or positions of each person responsible for the denial. It further allowed the court, in a Freedom of Information action, to allow the government additional time if "exceptional circumstances" were present and if the agency was exercising "due diligence in responding to the request."

The conference substitute generally adopts the 10- and 20-day administrative time deadlines of the House bill but also incorporates the 10-working-day extension of the Senate amendment for "unusual circumstances" in situations where the agency must search for and collect the requested records from field facilities separate from the office processing the request, where the agency must search for, collect, and examine a voluminous amount of separate and distinct records demanded in a single request, or where the agency has a need to consult with another agency or agency unit having a substantial interest in the determination because of the subject matter. This 10-day extension may be invoked by the agency either during initial review of the request or during appellate review but may not be invoked twice during review of the request.

The 30-working-day certification provision of the Senate amendment was eliminated, but the conference substitute retained the Senate language requiring that any agency's notification to a person of the denial of any request for records set forth the names and titles or positions of each

person responsible for the denial. The conferees intend that this listing include those persons responsible for the original, as well as the appellate, determination to deny the information requested. Consultations between an agency unit and the agency's legal staff, the public information staff, or the Department of Justice should not be considered the basis for an extension under this subsection.

The conference substitute also retained the Senate language giving the court authority to allow the agency additional time to examine requested records in exceptional circumstances where the agency was exercising due diligence in responding to the request and had been since the request was received.

National Defense and Foreign Policy Exemption (b)(1)

The House bill amended subsection (b)(1) of the Freedom of Information law to permit an agency to withhold information "authorized under the criteria established by an Executive order to be kept secret in the interest of the national defense or foreign policy."

The Senate amendment contained similar language but added "statute" to the exemption provision.

The conference substitute combines language of both House and Senate bills to permit an agency to withhold information "specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy" where they are, "in fact, properly classified" pursuant to both procedural and substantive criteria contained in such Executive order.

When linked with the authority conferred upon the Federal courts in this conference substitute for in camera examination of contested records as part of their de novo determination in Freedom of Information cases, this clarifies Congressional intent to override the Supreme Court's holding in the case of E.P.A. v. Mink, et al., 410 U.S. 73 (1973) with respect to de novo review of classified documents.

However, the conferees recognize that the Executive departments responsible for national defense and foreign policy matters have unique insights into what adverse affects might occur as a result of public disclosure of a particular classified record. Accordingly, the conferees expect that Federal courts, in making de novo determinations in section 552(b)(1) cases under the Freedom of Information law, will accord substantial weight to an agency's affidavit concerning the details of the classified status of the disputed record.

Restricted Data (42 U.S.C. 2162), Communication Intelligence (18 U.S.C. 798), and Intelligence Sources and Methods (50 U.S.C. 403(d)(3) and g), may be classified and exempted under section 552(b)(3) of the Freedom of Information Act. When such information is subjected to court review, the court should recognize that if such information is classified pursuant to one of the above statutes, it shall be exempted under this Act.

Investigatory Records

The Senate amendment contains an amendment to subsection (b)(7) of the Freedom of Information law, not included in the House bill, that would clarify Congressional intent disapproving certain court interpretations which have tended to expand the scope of agency authority to withhold certain "investigatory files compiled for law enforcement purposes." The Senate amendment would permit an agency to withhold investigatory records compiled for law enforcement purposes only to the extent that the production of such records would interfere with enforcement proceedings, deprive a person of a right to a fair trial or an impartial adjudication, constitute a clearly unwarranted invasion of personal privacy, disclose the identity of an informer, or disclose investigative techniques and procedures.

The conference substitute follows the Senate amendment except for the substitution of "confidential source" for "informer", the addition of language protecting records compiled by a criminal law enforcement agency from a confidential source in the course of a criminal or lawful national security intelligence investigation, the deletion of the word "clearly" relating to avoidance of an "unwarranted invasion of personal privacy," and the addition of a category allowing withholding of information whose disclosure "would endanger the life or physical safety of law enforcement personnel."

The conferees wish to make clear that the scope of this exception against disclosure of "investigative techniques and procedures" should not be interpreted to include routine techniques and procedures already well known to the public, such as ballistics tests, fingerprinting, and other scientific tests or commonly known techniques. Nor is this exemption intended to include records falling within the scope of subsection (a)(2) of the Freedom of Information law, such as administrative staff manuals and instructions to staff that affect a member of the public.

The substitution of "confidential source" is to make clear that the identity of a person other than a paid informer may be protected if the person provided information under an express assurance of confidentiality or from which such an assurance could be reasonably implied. Under this category, in every case where the investigatory records sought were compiled for law enforcement purposes--either civil or criminal in nature--the agency can withhold the names, addresses, and other information that would reveal the identity of a confidential source who furnished the information. However, where the records are compiled by a criminal law enforcement agency, all of the information furnished only by a confidential source may be withheld if the information was compiled in the course of a criminal or lawful national security intelligence investigation. The conferees intend the term "criminal law enforcement agency" to be narrowly construed to

include the Federal Bureau of Investigation and similar investigative agencies. Likewise, "national security" is to be strictly construed to refer to military security, national defense, or foreign policy. Personnel, regulatory, and civil enforcement investigations are covered by the first clause authorizing withholding of information that would reveal the identity of a confidential source but are not encompassed by the second clause authorizing withholding of all confidential information under the specified circumstances.

The conferees also wish to make clear that disclosure of information about a person to that person does not constitute an invasion of his privacy. Finally, the conferees express approval of the present Justice Department policy waiving legal exemptions for withholding historic investigatory records over 15 years old, and they encourage its continuation.

Segregable Portions of Records

The Senate amendment contained a provision, not included in the House bill, providing that any reasonably segregable portion of a record shall be provided to any person requesting such record after the deletion of portions which may be held to be exempt under subsection (b) of the Freedom of Information law.

The conference substitute follows the Senate amendment.

Annual Reports by Agencies

The House bill provided that each agency submit an annual report, on or before March 1 of each calendar year, to the Speaker of the House and the President of the Senate, for referral to the appropriate committees of the Congress. Such report shall include statistical information on the number of agency determinations to withhold information requested under the Freedom of Information law, the reasons for such withholding, the number of appeals of such adverse determinations, the result and reasons for each, a copy of every rule made by the agency in connection with this law, a copy of the agency fee schedule and the total amount of fees collected by the agency during the year, and other information indicating efforts to properly administer the Freedom of Information law.

The Senate amendment contained similar provisions and added two requirements not contained in the House bill, (1) that each agency report list those officials responsible for each denial of records and the numbers of cases in which each participated during the year and (2) that the Attorney General also submit a separate annual report on or before March 1 of each calendar year listing the number of cases arising under the Freedom of Information law, the exemption involved in each such case, the disposition of the case, and the costs, fees, and penalties assessed under the law. The Attorney General's report shall also include a description of Justice Department efforts to encourage agency compliance with the law.

The conference substitute incorporates the major provisions of the House bill and two Senate amendments. With respect to the annual reporting by each agency of the names and titles or positions of each person responsible for the denial of records requested under the Freedom of Information law and the number of instances of participation for each, the conferees wish to make clear that such listing include those persons responsible for the original determination to deny the information requested in each case as well as all other agency employees or officials who were responsible for determinations at subsequent stages in the decision. The conference substitute also requires an annual reporting of court and agency findings and action under section (a)(4)(F) relating to imposition of sanctions against government employees and officials under the law.

Expansion of Agency Definition

The House bill extends the applicability of the Freedom of Information law to include any executive department, military department, Government corporation, Government-controlled corporation, or other establishment in the executive branch of Government (including the Executive Office of the President), or any independent regulatory agency.

The Senate amendment provided that for purposes of the Freedom of Information law the term agency included any agency defined in section 551(1) of title 5, United States

Code, and in addition included the United States Postal Service, the Postal Rate Commission, and any other authority of the Government of the United States which is a corporation and which receives any appropriated funds.

The conference substitute follows the House bill. The conferees state that they intend to include within the definition of "agency" those entities encompassed by 5 U.S.C. 551 and other entities including the United States Postal Service, the Postal Rate Commission, and government corporations or government-controlled corporations now in existence, or which may be created in the future. They do not intend to include corporations which receive appropriated funds but are neither chartered by the Federal Government nor controlled by it, such as the Corporation for Public Broadcasting. Expansion of the definition of "agency" in this subsection is intended to expand applicability of the Freedom of Information Act but is not intended to reflect the meaning of "agency" when applied to subdivision offices or units within an agency.

By the term "Executive Office of the President" the conferees intend to codify the result reached in Soucie v. David, 448 F. 2d. 1067 (D.C. CIR. 1971). The term is not to be interpreted as including the President's immediate personal staff or units in the Executive Office whose sole function is to advise and assist the President.

Effective Date

Both the House bill and the Senate amendment provided for an effective date of 90 days after the date of enactment of these amendments to the Freedom of Information law.

The conference substitute adopts the language of the Senate amendment.