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ACTION

THE WHITE HOUSE

WASHINGTON

October 9, 1974

*MR7*

MEMORANDUM FOR: THE PRESIDENT

FROM: KEN COLE *C*

SUBJECT: H. R. 12471, AMENDMENTS TO THE FREEDOM OF INFORMATION ACT

Background

The Conference bill passed the Senate by voice vote October 1 and the House on October 7 347 to 2. As previous discussions with your legal staff have indicated, the bill contains a severely objectionable provision providing for judicial review of document classification. There are also difficulties with a section permitting search and disclosure of law enforcement agency investigatory files.

Utilizing your letter of August 20 to Kennedy and Moorhead, the affected Departments (State, Justice, Defense and CIA) as well as OMB and your Domestic Council have worked extensively to moderate these provisions without substantial progress, although a number of your concerns about other problems have been accommodated. The Conference Committee maintained that the House and Senate versions of the judicial review provision were virtually identical and that they therefore lacked the authority to make substantial alterations. The best we were able to obtain was some favorable legislative history in the Conference Report and in the debate on the House floor (attached at Tab A). All affected agencies except Civil Service strongly recommend a veto. The letter from Colby to you so stating is attached at Tab B.

Options

Since the legislation was received here yesterday, you have basically two options:

1. Sign the legislation. Recognize the political difficulties of opposing "Freedom of Information"; have a signing ceremony; and issue a signing

statement which reinforces your Administration's interpretations of the judicial review of classified documents provision and expresses your intention to seek resolution of the constitutional issue in the courts (Buchen) .

2. Veto the legislation and simultaneously transmit virtually identical legislation with your proposed changes . This would be preceded by a meeting with the senior Conferees when you endorse all aspects of their bill but one, empathize with their inability to alter this provision in Conference, but point out its crucial effect on the Executive; and ask that they work toward immediate passage of your virtually identical bill instead of attempting to override your veto. A draft veto message is attached for your consideration in this regard (Tab C) . (Ash, Timmons, NSC, CIA, State, Justice and Defense recommend veto.)

Your legal staff is currently wrestling with the propriety of your using the Pocket Veto because of the month-long recess . All vetos would, of course, have to be uniform, but this possibility might make this option more attractive .

Since either scenario involves Congressional participation, it is important to have your decision in time to be effectuated before Congress goes home .

Decision

|       |          |                  |   |                        |
|-------|----------|------------------|---|------------------------|
| _____ | Option 1 | Sign legislation | Buchen  |                        |
| _____ | Option 2 | Veto legislation | Ash<br>Timmons<br>NSC<br>CIA<br>State<br>Justice<br>Defense | Marsh<br>Burch<br>Cole |