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Rep. Moss Warns Agencies

Champion of Freedom Likes His Secrecy Too

By Stephen M. Aug
Washington Star Staff Writer

The principal architect of the federal Freedom of Information Act, which is designed to pry loose the secrets of a reluctant bureaucracy, has warned federal regulatory agencies that they'd better not make public a series of reports prepared for him.

The unusual situation, which finds the champion of freedom of information defending secrecy for his own material, emerged late yesterday when Rep. John E. Moss, D-Calif., sent letters to nine agencies advising them to deny the request of a Washington Star reporter for access to the reports.

The chairman of one regulatory agency — who declined to be identified by name — said of Moss' demand for secrecy, "it's flabbergasting for the father of the Freedom of Information Act."

MOSS SAID the information is "the property of the Congress," even though some of the material is routinely made public by the nine agencies involved.

The material Moss wants kept secret are the answer to questionnaires he sent out in June to the nine agencies under the jurisdiction of the House Commerce investigative subcommittee, of which he is chairman.

The questionnaires, which contained 96 questions, sought information ranging from copies of routinely issued annual reports to a listing of speeches — including location, date, travel costs, names of sponsoring organizations — given by every commission member or staff member of grade GS-15 or above for the past five years.

They also sought data on possibly improper contacts between regulators and representatives of the firms they regulate, the number and types of companies they regulate (and the total employment of the industries), a listing of the 20 oldest pending proceedings at each agency and a variety of internal papers including data on workload management information systems.

The questionnaires form the basis of an investigation by the subcommittee into regulatory agencies. The

investigation was begun in June about the time President Ford discussed regulatory reform with a group of about two dozen congressmen, of which Moss was

THE AGENCIES are the Federal Power Commission, Federal Trade Commission, Interstate Commerce Commission, Securities and Exchange Commission, Consumer Product Safety Commission, National Highway Traffic Safety Administration, Environmental Protection Agency and Food and Drug Administration.

Privately, officials of these agencies have decried the amount of work the questionnaires have entailed. Several have complained that they may have added to the long delays for which these same agencies are being widely criticized.

The FCC, for example, which has one case still active that can be traced to 1938, devoted 1,800 man-hours to its reply to the questionnaire. An FCC staff member said the result was between 17,000 and 20,000 pages of information, cram-

med into four big boxes and produced at a cost of about \$20,000.

One report indicated the Securities and Exchange Commission had spent about \$100,000 preparing its answer to the Moss questionnaires.

Although requests by The Star were sent to the ICC, FCC, FPC and SEC, only the ICC has responded.

THE ICC SAID it was rejecting The Star's request to see the documents based on Moss's letter. The agency enclosed a three-paragraph letter from Moss to ICC Chairman George M. Stafford dated July 29, stating that the materials were congressional property and were not to be released without express authorization from his subcommittee.

The subcommittee made available last night, however, a four-page letter Moss sent yesterday to FPC Chairman John N. Nassikas, who had advised the congressman of The Star's request.

The letter cites two rules under which the House conducts investigations and states that records acquired in the course of committee investigations are the property of the House.

The letter contended the information was being gathered much in the way a grand jury gathers information, and "premature release of your responses before the subcommittee has had a chance to review and analyze them could hamper our investigation in many ways."

INTERVIEWED last night, Moss said some of the material — which he had not examined — may bear on forthcoming agency actions or could hint at upcoming agency enforcement activities. A lot of the information, he said, would not be publicly divulged, "nor does the Freedom of Information Act have any applicability to Congress. I ought to know — I wrote it."

He added that he regards "the role of the Congress in this case very much analogous to a grand jury review, and I won't look with very much charity on an agency" that makes the material public.

"I do not intend to let you or the agencies direct the investigation for which I have been given responsibility," he added.

A CHECK with one lawyer who has had extensive court experience with the Freedom of Information Act indicated that the agencies may not be able to rely on Moss' demand as an excuse for keeping the material private.

Larry Ellsworth, a lawyer at Ralph Nader's Freedom of Information Clearinghouse, said that unless the material in the report falls within one of a group of specific exemptions in the Freedom of Information Act the agency "must disclose any record which it has in its possession, custody or control." Requests from congressmen, he pointed out, are not among the exemptions.

Nevertheless, one copy of an agency report was routinely made public Monday by the Consumer Product Safety Commission. Two reporters — one representing the Bureau of National Affairs and another the Product Safety Letter — were given copies on request.

Ren Aaron Eisenberg, director of the commission's Office of Public Affairs, said the agency has a "very liberal interpretation of the government's obligation" to make information available and routinely provides it to those who ask for it.

HE SAID THAT shortly after the agency received a copy of a letter from Moss it tried to recall the reports from the two reporters but without success.

Sharon Coffin, executive editor of the newsletter, said the CPSC "is so open that most of that stuff (in the report to Moss) is available routinely."

Accordingly, the Interstate Commerce Commission should treat these returns as the property of the Congress and not release them to any party outside the Commission without the Subcommittee's express authorization.

Sincerely,



JOHN E. MOSS
Chairman

Rep. Moss, father of the Freedom of Information Act, asked secrecy in this July 29 letter.