

THE WHITE HOUSE

WASHINGTON

A MESSAGE BY THE PRESIDENT TO MEMBERS OF SIGMA DELTA CHI

You are all concerned about my recent veto of the Freedom of Information Act Amendments -- and understandably so.

Upon assuming the Office of President, I assured my countrymen that mine would be an open and candid Administration. To some people, my veto of the Freedom of Information Act Amendments may have appeared inconsistent with that pledge. Actually, it was not. Let me explain.

To begin with, I agree with nearly all of you that the Freedom of Information Act should be strengthened. I would be delighted to sign legislation providing for more prompt, efficient and complete disclosure of information. To that end, I have sent Congress proposals for modifying the legislation I vetoed -- proposals that would meet my objections to the bill while giving us a strong, workable Freedom of Information Act.

There were three major problems with the Freedom of Information Act Amendments recently placed on my desk. These problems probably could have been worked out beforehand, except that most of the House-Senate Conference Committee's work on the legislation has been completed before I assumed the Presidency. So I had been playing catch-up ball.

My chief objection to the bill I received is that it would authorize any Federal judge to overturn any protective classification placed on certain material by a government agency simply because the judge found the plaintiff's position to be of equal, not superior, merit to the Government's. This is neither good sense nor good law.

In my view, such a policy could, in some instances, adversely affect our diplomatic relations and endanger our military and intelligence security.

I accept the concept of court review of classified materials. But the courts should not be forced to make what amounts to the initial classification decision in sensitive and complex areas where they have no particular expertise.

What I have proposed to the Congress is that the courts be authorized to review classifications, but that the classifications should be upheld where a reasonable basis exists to support them. And in determining whether a classification is reasonable, the court would have to examine all other available evidence before resorting to private examination of the classified document itself. The burden of proof remains with the government to demonstrate the reasonableness of the classification.

My second objection to the vetoed bill is that it would have allowed an agency only 10 days to determine whether to furnish a requested document -- and then only 20 days for a ruling on a decision to withhold the document. An additional 10 days would have been permitted in unusual cases.

These time limits are unrealistic. Therefore, I have proposed that the two ten-day periods be increased to 30 and 15 days, respectively. If an agency needs more time, it could seek an extension from the court. This additional time would make it possible for the Government to give full responsible consideration to each request -- and still facilitate a prompt response.

My third objection to the vetoed bill was that millions of pages of FBI and other investigatory law enforcement files would have to be disclosed at the request of any person unless the Government could prove to a court -- paragraph by paragraph -- that disclosure would cause one of the particular harms specified in the amendment.

I maintain that in those cases where a substantial possibility exists that specified harms would be caused by disclosure, a document should be withheld. The potential harm we are talking about here could deprive defendants of the right to a fair trial, invade personal privacy, compromise our law enforcement operations and endanger the lives or the physical safety of law enforcement personnel.

I want to sign good sound legislation strengthening the Freedom of Information Act. That is why I have submitted to the Congress specific language dealing with the three problems I have outlined for you.

As I have told the Speaker of the House and other Congressional leaders, I believe that enactment of the Freedom of Information bill with these changes would produce the truly significant and beneficial legislation we all seek.

November 14, 1974

GERALD R. FORD