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THE PRIVACY ACT OF 1974

(As it Relates to Congressional Liaison)

1. SUBJECT MATTER

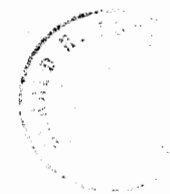
- The Act applies to any item, collection, or grouping of information about an individual that is maintained by an Agency of the Federal Government.

2. RELATIONSHIP TO THE FREEDOM OF INFORMATION ACT

- The Freedom of Information Act deals with the right of all members of the public to Government information.
- The Privacy Act is concerned with the rights of each individual and the records of his personal data held by the Government.

3. CONDITIONS IMPOSED ON AGENCIES IN ACQUIRING AND MAINTAINING PERSONAL DATA

- A - Only information relevant and necessary to the functions of the Agency may be collected
- B - The Agency must establish rules for
 - Notifying an individual in response to an inquiry as to whether a record is maintained concerning him
 - Disclosing to him the contents of such record
 - Amending such record in response to a request by the individual
- C - The Agency must publish in the Federal Register by August 27 and annually thereafter
 - A full and complete description of each system of records subject to the Act (i. e., records containing personal data which are retrievable by name or other individual identifier)



- A description of procedures through which the individual can exercise his rights of access.
- D - The Agency must provide timely advance notice to the Congress and to OMB concerning the privacy impact of any proposed new system of records containing personal data.

4. SECURITY AND ACCURACY OF RECORDS

- All Agencies must
 - Insure accuracy, relevance, timeliness, and completeness of all records
 - Must provide training and rules of conduct to insure that all personnel dealing in records of personal data perform their duties in conformity with the Act.
 - Establish appropriate safeguards for all record systems containing personal data to prevent any willful or inadvertent misuse

5. RESTRICTIONS ON DISCLOSURE TO OTHER THAN THE RECORD SUBJECT

- A - An Agency may disclose files only to
 - Persons having a need-to-know in the performance of their duties
 - For a routine use, i. e., compatible with the purpose for which it was originally collected, provided that notice of such routine use has been published in the Federal Register
- B - Disclosure is also authorized as required by the Freedom of Information Act.

6. ACCESS BY THE RECORD SUBJECT

- A - The individual must be given access to his record and to have a copy made of all or part thereof
- B - The individual may request amendment of a record

- If an amendment of the record is requested, the Agency must within 10 days
 - Make the requested correction, or
 - Inform the individual of the refusal, provide the reason and inform him of his right to request a review

7. CIVIL REMEDIES

- A - An individual may within 2 years bring a cause of action against an Agency in the U. S. District Court (in the District of a residence or the District of Columbia) for:
 - Refusal to comply with a request of an individual for access to his record
 - Making a final determination not to amend a record as requested
- B - If the Court determines that the Agency intentionally or willfully failed to comply with the Act to the detriment of the plaintiff, the damages shall not be less than \$1,000 and the Government shall be assessed attorney fees and other litigation costs

8. CRIMINAL PENALTIES

- A fine of not more than \$5,000 may be assessed against any officer or employee of an Agency who
 - Willfully maintains a system of records without giving the required public notice

9. THE PRIVACY PROTECTION STUDY COMMISSION

- Members
 - The Commission consists of 3 members appointed by the President, 2 by the President of the Senate, and 3 by the Speaker of the House

- **Functions**

- The Commission is directed to make a study of data banks, information systems of Government and private organizations
 - To determine the standards and procedures in force for the protection of personal information
 - To make recommendations to the President of the Congress for legislative, administrative or voluntary adoption of the principles of the Privacy Act
 - To make recommendations for other legislation as appropriate

- **Duration**

- The Commission shall perform its work within two years

10. **EFFECTIVE DATE**

- All principal provisions except those relating to the Privacy Commission and mailing lists take effect on September 27, 1975

Section 7173(b) permits Congressional override of a Presidential determination to exempt from subsection (a) certain agencies with a national security nexus. The override may be by vote of a single Committee of Congress.

- . On Constitutional principles, the Executive branch has consistently opposed this type of procedure. Legislative overrides of Presidential actions should be in the form of traditional laws.
- . In rare instances and after careful review, one house "vetoes" have been signed into law, but they have also been the cause of Presidential vetoes.
- . The 30-day waiting period is also objectionable and constitutes another form of legislative encroachment. This provision raises serious practical and Constitutional questions.

Section 7176(c) permits the award of attorney fees pursuant to actions under the bill.

- . Traditionally and statutorily the award of attorney fees against the United States has been prohibited.
- . Breaches of this rule have occurred only after experience has indicated that the enforcement of a national policy of great significance requires the use of the "private attorney general" concept. There have been only four or five such exceptions and this bill does not meet the standards for this type of provision.
- . This provision stimulates litigation.
- . At a time when significant efforts are being made to reduce Federal expenditures, this provision would require taxpayers to pay for the costs of litigation for both parties to a dispute.
- . This provision would result in litigation over the attorney fee award itself, completely unrelated to the merits of the dispute.

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GENE TAYLOR, MO.

U.S. House of Representatives
COMMITTEE ON POST OFFICE AND CIVIL SERVICE
207 CANNON HOUSE OFFICE BUILDING
Washington, D.C. 20515

September 17, 1974

MEMORANDUM TO: Max Friedersdorf
FROM: Tony Raymond
SUBJECT: Committee Print dated September 13, 1974 on
H.R. 1281

Attached is the above mentioned Committee Print on H.R. 1281, in addition to a list delineating the remaining four Administration objections.

This language is identical to the draft language of the President's Commission on Privacy, with the exception of four provisions and language relating to the Postal Service, as I will mention below.

A new Committee Print will be available tomorrow, incorporating objections numbered 1, 3 and 4. Number 2 is being deleted as well as lines 7 and 8 on Page 26, relating to the U. S. Postal Service.

I have discussed the new Committee Print which will be issued tomorrow with Tony Mondello, General Counsel of the Civil Service Commission and he tells me he will recommend to the Chairman of the Civil Service Commission to continue in opposition to this legislation because of the inclusion of numbers 1, 3 and 4. He is to prepare a letter stating such objections and transmit it to the Committee tomorrow.

Please inform me what position if any the Administration intends to take on this legislation, so that we might be able to properly brief our Republican members.

This proposal is scheduled for Committee consideration on Thursday, September 19.



THE WHITE HOUSE
WASHINGTON

September 19, 1974

MEMORANDUM FOR:

~~GEOFFREY SHEPARD~~

THROUGH:

~~MAY FRIEDENSBORF~~

FROM:

GENE AINSWORTH

SUBJECT:

H. R. 1281

The House Post Office and Civil Service Committee is in the final stages of mark-up of this legislation and we need to present a solid Administration position to Republicans on the Committee prior to their next meeting.

I am attaching a memorandum from Tony Raymond of the Committee staff. Could you review this material and let me know what our position is so I can brief our Republicans.

*Handled by phone
9/25*



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Please inform me what position if any the Administration intends to take on this legislation, so that we might be able to properly brief our Republican members.

This proposal is scheduled for Committee consideration on Thursday, September 19.

After a number of meetings between the Civil Service Commission and the Subcommittee Staff, Administration objections to the bill as presently drafted in the Committee print have greatly diminished.

The remaining Administration objections to the Committee print of H. R. 1281 are as follows:

- cps* 1) Section 7173(b) (page 33) -- this section allows the appropriate House or Senate Committee to disapprove the President's recommendation of exempting an agency other than the CIA, FBI, or NSA from the provisions of this act. While objecting to the concept of any Congressional disapproval, the Administration feels that at a minimum any disapproval should come from only the entire House or Senate.
- mt* 2) Section 7175(a) (2) (page 40) -- the Commission objects to allowing a trial de novo as part of Judicial review. The Commission points out that in **current** appeals procedures, plaintiffs only have a right to petition for a review of the record that has already been made.
- cps* 3) Section 7175(d) (3) (page 42) -- the Commission feels that in allowing the court to mandate the Commission to take particular actions (including imposing sanctions) it interferes with the legitimate purview of labor management relations. **Sanctions -*
- cps* 4) Section 7176(c) (page 45) -- the Commission is opposed to attorneys fees if the plaintiff wins in court.

The "new" Comm. Print will include objections numbered #1, 3, 4. #2 will be deleted. Lines 7 and 8, Page 26, will also be struck for the bill.



[COMMITTEE PRINT]

SEPTEMBER 13, 1974

Union Calendar No.

93^d CONGRESS
2^d SESSION

H. R. 1281

[Report No. 93-]

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 1973

Mr. CHARLES H. WILSON of California introduced the following bill; which was referred to the Committee on Post Office and Civil Service

SEPTEMBER , 1974

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend title 5, United States Code, to protect civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights, to prevent unwarranted governmental invasions of their privacy, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That ~~(a) chapter 71 of title 5, United States Code, is~~
4 ~~amended by adding at the end thereof the following new~~
5 ~~subchapter III:~~

6 ~~“SUBCHAPTER III—EMPLOYEE RIGHTS~~

7 ~~“§ 7171. Policy~~

8 ~~“It is the policy of the United States, as an employer,~~
9 ~~to assure that those officials of Executive agencies charged~~

~~1 with administrative or supervisory responsibility recognize~~
~~2 and protect the personal and individual rights, entitlements,~~
~~3 and benefits of employees of, and applicants for employment~~
~~4 in, Executive agencies.~~

~~5 "§ 7172. Definition~~

~~6 "For the purpose of this subchapter, 'official of an~~
~~7 Executive agency' means—~~

~~8 "(1) an officer of an Executive agency;~~

~~9 "(2) an 'officer' of any of the 'uniformed services'~~
~~10 as such terms are defined under section 101 of title~~
~~11 37; and~~

~~12 "(3) an individual acting or purporting to act~~
~~13 under the authority of an officer referred to in para-~~
~~14 graph (1) or (2) of this section.~~

~~15 "§ 7173. Employee rights~~

~~16 "(a) An official of an Executive agency may not—~~

~~17 "(1) require or request, or attempt to require~~
~~18 or request, an employee of an Executive agency or an~~
~~19 applicant for employment in an Executive agency to~~
~~20 disclose his race, religion, or national origin, or the race,~~
~~21 religion, or national origin of any of his forebears. This~~
~~22 paragraph does not prohibit inquiry concerning—~~

~~23 "(A) the citizenship of an employee or appli-~~
~~24 cant;~~

~~25 "(B) the national origin of an employee or~~

~~1 applicant when that inquiry is considered necessary~~
~~2 or advisable to determine suitability for assign-~~
~~3 ment to activities or undertakings related to the~~
~~4 national security of the United States or to law~~
~~5 enforcement or to activities or undertakings of any~~
~~6 nature outside the United States;~~

~~7 "(C) the race, religion, or national origin of an~~
~~8 employee or applicant when that matter is in issue~~
~~9 in an allegation or complaint of discrimination; or~~

~~10 "(D) the race, religion, or national origin of an~~
~~11 employee or applicant when (i) that matter is di-~~
~~12 rectly related to or an integral part of scientific re-~~
~~13 search or program evaluation, (ii) appropriate safe-~~
~~14 guards have been instituted to preserve both the~~
~~15 voluntary participation and the anonymity of the~~
~~16 employee or applicant, and (iii) the inquiry has~~
~~17 been approved by the Civil Service Commission.~~

~~18 This paragraph does not prohibit an inquiry made to~~
~~19 satisfy the requirements of law providing preference for~~
~~20 Indians in connection with functions or services affect-~~
~~21 ing Indians;~~

~~22 "(2) coerce, require, or request, or attempt to~~
~~23 coerce, require, or request, an employee of an Executive~~
~~24 agency to attend or participate in a formal or informal~~
~~25 meeting, assemblage, or other group activity held to~~

~~present, advocate, develop, explain, or otherwise cover
in any way, by lecture, discussion, discourse, instruction,
visual presentation, or otherwise, any matter or subject
other than—~~

~~“(A) the performance of official duties to
which that employee is or may be assigned in the
Executive agency; or~~

~~“(B) the development of skills, knowledge, or
abilities that qualify him for the performance of
those official duties;~~

~~“(3) coerce, require, or request, or attempt to
coerce, require, or request, an employee of an Executive
agency to—~~

~~“(A) participate in any way in an activity or
undertaking unless it is related to the performance
of official duties to which the employee is or may
be assigned in the Executive agency or related to
the development of skills, knowledge, or abilities
that qualify him for the performance of those official
duties; or~~

~~“(B) make any report concerning any activity
or undertaking of the employee not involving his
official duties, except—~~

~~“(i) when there is reason to believe that
the activity or undertaking conflicts with, or~~

~~adversely affects the performance of, his official
duties; or~~

~~“(ii) as authorized to the contrary under
paragraph (6) of this subsection.~~

~~This paragraph does not prohibit the use of appropriate
publicity to inform employees of requests for assistance
from public service programs or organizations;~~

~~“(4) require or request, or attempt to require or
request, an employee of an Executive agency or an ap-
plicant for employment in an Executive agency to submit
to an interrogation or examination or to take a polygraph
or psychological test designed to elicit from the employee
or applicant information concerning his personal relation-
ship with any individual related to him by blood or mar-
riage, his religious beliefs or practices, or his attitude or
conduct with respect to sexual matters. This paragraph
does not prohibit—~~

~~“(A) a physician from eliciting this informa-
tion or authorizing these tests in the diagnosis or
treatment of an employee or applicant in individual
cases and not pursuant to general practice or regu-
lation governing the examination of employees or
applicants, when the physician considers the infor-
mation necessary to enable him to determine~~

~~whether or not the employee or applicant is suffering from mental illness;~~

~~"(B) an official of an Executive agency from advising an employee or applicant of a specific charge of sexual misconduct made against the employee or applicant and giving him a full opportunity to refute the charge; or~~

~~"(C) an official of an Executive agency from eliciting, from an employee or applicant, in individual cases and not pursuant to general practice or regulation, information concerning the personal relationship of the employee or applicant with any individual related to him by blood or marriage, when that official considers the information necessary in the interest of national security;~~

~~"(5) coerce or require, or attempt to coerce or require, an employee of an Executive agency to invest his earnings in bonds or other obligations or securities issued by the United States or by an Executive agency, or to make donations to any institution or cause of any kind. This paragraph does not prohibit an official of an Executive agency from calling meetings and taking any action appropriate to inform an employee of the opportunity—~~

~~"(A) voluntarily to invest his earnings in—~~

~~bonds or other obligations or securities issued by the United States or by an Executive agency; or~~

~~"(B) voluntarily to make donations to any institution or cause;~~

~~"(6) require or request, or attempt to require or request, an employee of an Executive agency (other than a Presidential appointee) to disclose his property or the property of any member of his family or household.~~

~~This paragraph does not prohibit—~~

~~"(A) the Department of the Treasury or any other Executive agency from requiring an employee to make such reports as may be necessary or appropriate for the determination of his liability for taxes, tariffs, customs duties, or similar obligations to the United States; or~~

~~"(B) an official of an Executive agency from requiring an employee who participates (other than in a clerical capacity) in any determination with respect to—~~

~~"(i) a Government contract or grant;~~

~~"(ii) the regulation of non-Federal enterprise;~~

~~"(iii) the tax or other liability of any person to the United States; or~~

~~“(iv) a claim that requires expenditure of money of the United States; from disclosing specific items of the property of that employee, or specific items of the property of any member of his family or household, which may tend to indicate a conflict of interest with respect to the performance of any of the official duties to which the employee is or may be assigned.~~

~~As used in this paragraph, ‘property’ includes items of property, income, and other assets, and the source thereof, liabilities, and personal and domestic expenditures;~~

~~“(7) prohibit or restrict, or attempt to prohibit or restrict, the exercise by an employee of an Executive agency of the right of reasonable communication with any official of his agency; or~~

~~“(8) remove, suspend or furlough from duty without pay, demote, reduce in rank, seniority, status, pay, or performance or efficiency rating, deny promotion to, relocate, reassign, discipline, or discriminate in regard to any employment right, entitlement, or benefit or any term or condition of employment of, an employee of an Executive agency, or threaten to commit any of those acts, by reason of—~~

~~“(A) the refusal or failure of the employee~~

~~to submit to or comply with any requirement, request, or action prohibited by this subsection; or~~
~~“(B) the exercise by the employee of any right, entitlement, benefit, or other protection granted or secured by this section and section 7175 of this title.~~

~~“(b) The provisions of subsection (a) of this section do not apply to—~~

~~“(1) the Central Intelligence Agency;~~

~~“(2) the National Security Agency;~~

~~“(3) the Federal Bureau of Investigation; or~~

~~“(4) any other Executive agency, or part thereof, as the President, in the interest of national security, may recommend to the Congress.~~

~~The exemption recommended by the President and transmitted to the Congress under paragraph (4) of this subsection shall become effective at the end of the first period of 30 calendar days of continuous session of the Congress after the date on which the recommendation is transmitted unless, between the date of transmittal and the end of the 30 day period, either the committee of the House of Representatives or the committee of the Senate to which the recommendation has been referred adopts a resolution which specifically disapproves the exemption so recommended and trans-~~

~~1 mitted. The continuity of a session is broken only by an ad-~~
~~2 journment of the Congress sine die. The days on which~~
~~3 either House is not in session because of an adjournment of~~
~~4 more than 3 days to a day certain are excluded in the compu-~~
~~5 tation of the 30 day period.~~

~~6 "(c) (1) An employee of, or an applicant for employ-~~
~~7 ment in, an Executive agency who claims to be aggrieved by~~
~~8 a violation or threatened violation of subsection (a) of this~~
~~9 section is entitled to file a grievance with the agency con-~~
~~10 cerned not later than 15 days after the date of the violation~~
~~11 or threatened violation.~~

~~12 "(2) If —~~

~~13 "(A) the decision on the grievance by the Execu-~~
~~14 tive agency is adverse to the employee or applicant; or~~

~~15 "(B) after 60 days from the date the grievance is~~
~~16 filed the Executive agency has not issued a decision on~~
~~17 the grievance;~~

~~18 the employee or applicant is entitled to file a complaint with~~
~~19 the Board on Employee Rights not later than 15 days after~~
~~20 the adverse decision or the expiration of the 60 day period,~~
~~21 as the case may be.~~

~~22 "§ 7174. Board on Employee Rights—~~

~~23 "(a) There is hereby established a Board on Employee~~
~~24 Rights composed of three members appointed by the Presi-~~
~~25 dent, by and with the advice and consent of the Senate, one~~

~~1 of whom shall be a representative of a labor organization,~~
~~2 or association of supervisors, representing employees. Not~~
~~3 more than two members of the Board may be adherents of the~~
~~4 same political party and none of the members of the Board~~
~~5 may hold another office or position in the Government of the~~
~~6 United States. The President shall from time to time desig-~~
~~7 nate one of the members as chairman.~~

~~8 "(b) The term of office of each member of the Board~~
~~9 is 6 years. A member appointed to fill a vacancy occurring~~
~~10 before the end of the term of office of his predecessor serves~~
~~11 for the remainder of that term. When the term of office of a~~
~~12 member ends, he may continue to serve until his successor~~
~~13 is appointed and has qualified. The President may remove~~
~~14 a member only for inefficiency, neglect of duty, or mal-~~
~~15 feasance in office.~~

~~16 "(c) Two members of the Board constitute a quorum~~
~~17 for the transaction of business.~~

~~18 "(d) The Board may appoint and fix the pay of such~~
~~19 officers, attorneys, and employees, and make such expendi-~~
~~20 tures, as may be necessary to carry out its functions.~~

~~21 "(e) The Board shall prescribe rules and regulations~~
~~22 necessary and proper to carry out its functions under this~~
~~23 subchapter. To the extent consistent with efficient and eco-~~
~~24 nomical administration and the attainment and achievement~~
~~25 of justice in the consideration and disposition of matters be-~~

~~1 fore the Board, the rules and regulations shall provide for the~~
~~2 use of depositions of witnesses. The rules and regulations~~
~~3 shall also prescribe the maximum attorney's remuneration~~
~~4 which may be awarded under section 7176 (c) of this title~~
~~5 for services performed in connection with any matter before~~
~~6 the Board, or the court, or both, under this subchapter. The~~
~~7 Board may require, by subpoena or otherwise, the attendance~~
~~8 and testimony of witnesses, and the production of such~~
~~9 books, records, correspondence, memoranda, papers, and~~
~~10 documents, as it considers necessary.~~

~~11 "(f) (1) The Board shall receive and investigate written~~
~~12 complaints, filed under section 7173 (c) of this title, from~~
~~13 or on behalf of an employee or applicant claiming to be~~
~~14 aggrieved by a violation or threatened violation of section~~
~~15 7173 (a) of this title. On receipt of such a complaint, the~~
~~16 Board forthwith shall transmit a copy thereof to the head~~
~~17 of the Executive agency concerned.~~

~~18 "(2) If the Board determines, within 10 days after~~
~~19 its receipt of the complaint, that the facts alleged in the~~
~~20 complaint do not constitute a violation or threatened viola-~~
~~21 tion of section 7173 (a) of this title with respect to the~~
~~22 employee or applicant, it may dismiss the complaint without~~
~~23 a hearing. If the Board dismisses the complaint, it shall~~
~~24 notify all interested parties of the dismissal.~~

~~1 "(3) If the Board does not dismiss the complaint with-~~
~~2 in 10 days after its receipt thereof, it shall—~~

~~3 "(A) conduct a hearing on the complaint within~~
~~4 30 days after its receipt of the complaint; and—~~

~~5 "(B) furnish notice of the time, place, and nature~~
~~6 of the hearing thereon to all interested parties.~~

~~7 If a hearing on the complaint is to be conducted—~~

~~8 "(i) the Executive agency concerned shall file an~~
~~9 answer to the complaint and participate as a party in~~
~~10 the hearing; and—~~

~~11 "(ii) any official of that agency, who is alleged,~~
~~12 in the complaint or during the course of the hearing,~~
~~13 to have committed a violation or threatened viola-~~
~~14 tion of section 7173 (a) of this title, is entitled, in his~~
~~15 individual capacity, to file an answer to the allegation~~
~~16 and participate as a party in the hearing.~~

~~17 "(4) The Board shall render its final decision with re-~~
~~18 spect to any complaint within 30 days after the conclusion~~
~~19 of its hearing thereon.~~

~~20 "(g) With the written consent of the employee or ap-~~
~~21 plicant concerned, filed with the Board, an officer or repre-~~
~~22 sentative of not more than one labor organization, or asso-~~
~~23 ciation of supervisors, representing employees shall be given~~
~~24 an opportunity to participate in each hearing conducted un-~~

~~1 der this section, through submission of written data, views, or~~
~~2 arguments, and, in the discretion of the Board, with oppor-~~
~~3 tunity for oral presentation.~~

~~4 "(h) Insofar as consistent with the purposes of this sec-~~
~~5 tion, the provisions of subchapter II of chapter 5 of this~~
~~6 title apply to the rulemaking, hearing, and adjudication~~
~~7 functions of the Board under this section.~~

~~8 "(i) If, after hearing, the Board determines that a vio-~~
~~9 lation of section 7173 (a) of this title has not occurred or is~~
~~10 not threatened, the Board shall state its determination and~~
~~11 notify all interested parties of the determination. Each such~~
~~12 determination, including a dismissal by the Board of the~~
~~13 complaint without a hearing, constitutes a final decision of~~
~~14 the Board for purposes of judicial review.~~

~~15 "(j) If, after hearing, the Board determines that a vio-~~
~~16 lation of section 7173 (a) of this title has been committed~~
~~17 or threatened by an official of an Executive agency not sub-~~
~~18 ject to chapter 47 of title 10, the Board~~

~~19 "(1) shall immediately issue and cause to be served~~
~~20 on the official an order requiring him to cease and desist~~
~~21 from the unlawful act or practice which constitutes a~~
~~22 violation;~~

~~23 "(2) shall immediately endeavor to eliminate any~~
~~24 such unlawful act or practice by informal methods of~~
~~25 conference, conciliation, and persuasion; and~~

~~1 "(3) may, without regard to chapter 75 of this~~
~~2 title~~

~~3 "(A) (i) in the case of the first offense by~~
~~4 such an official, other than any official appointed~~
~~5 by the President, by and with the advice and con-~~
~~6 sent of the Senate, issue an official reprimand against~~
~~7 the official or order the suspension without pay of~~
~~8 the official from the position or office held by him~~
~~9 for a period of not to exceed 15 days; and~~

~~10 "(ii) in the case of a second or subsequent~~
~~11 offense by such official, order the suspension with-~~
~~12 out pay of the official from the position or office~~
~~13 held by him for a period of not less than 15 nor~~
~~14 more than 60 days or, when the Board considers~~
~~15 such second or subsequent offense to be sufficiently~~
~~16 serious to warrant such action, order the removal~~
~~17 of the official from the position or office; and~~

~~18 "(B) in the case of any offense by such an~~
~~19 official appointed by the President, by and with~~
~~20 the advice and consent of the Senate, transmit a~~
~~21 report concerning the violation to the President and~~
~~22 the Congress.~~

~~23 A reprimand or order under subparagraph (3) (A) of this~~
~~24 subsection shall not become effective until the expiration of~~
~~25 the period within which the official aggrieved by the repri-~~

~~1 mand or order may file a petition for review or complaint~~
~~2 for trial de novo or, if such a petition or complaint is filed,~~
~~3 until the court makes a final disposition of the case.~~

~~4 "(k) If, after hearing, the Board determines that a~~
~~5 violation of section 7173 (a) of this title has been com-~~
~~6 mitted or threatened by an official of an Executive agency~~
~~7 subject to chapter 47 of title 10, the Board shall—~~

~~8 "(1) submit a report thereon to the Secretary of~~
~~9 the military department concerned;—~~

~~10 "(2) endeavor to eliminate any unlawful act or~~
~~11 practice which constitutes such a violation by informal~~
~~12 methods of conference, conciliation, and persuasion; and~~

~~13 "(3) refer its determination and the record in the~~
~~14 case to the Secretary concerned, as defined in section~~
~~15 101 of title 10, who shall take immediate steps to dis-~~
~~16 pose of the matter under chapter 47 of title 10.~~

~~17 However, the immediate steps referred to in paragraph (3)~~
~~18 of this subsection shall not be taken by the Secretary con-~~
~~19 cerned until the expiration of the period within which the~~
~~20 official aggrieved by the reference to the Secretary by the~~
~~21 Board under that paragraph may file a petition for review or~~
~~22 complaint for trial de novo or, if such a petition or complaint~~
~~23 is filed, until the court makes a final disposition of the case.~~

~~24 "(1) (1) The Board shall submit, not later than March~~
~~25 31 of each year, to the President for transmittal to the Con-~~

~~1 gress a report on its activities under this subchapter during~~
~~2 the immediately preceding calendar year, including—~~

~~3 "(A) the types and kinds of complaints filed with~~
~~4 the Board;~~

~~5 "(B) the determinations, orders, and actions of the~~
~~6 Board with respect to those complaints;~~

~~7 "(C) the name of each official of an Executive~~
~~8 agency with respect to whom any action was taken or~~
~~9 penalty imposed under subsection (j) of this section;~~

~~10 "(D) the nature of that action or penalty; and~~

~~11 "(E) such other matters as the Board considers~~
~~12 relevant and appropriate to provide full and complete~~
~~13 information with respect to the operation and administra-~~
~~14 tion of this subchapter.~~

~~15 "(2) The Secretary of each military department shall~~
~~16 submit, not later than March 31 of each year, to the Presi-~~
~~17 dent for transmittal to the Congress, a report on his activities~~
~~18 under this subchapter during the immediately preceding~~
~~19 calendar year, including—~~

~~20 "(A) the disposition, under chapter 47 of title 10,~~
~~21 of matters referred to the Secretary under paragraph~~
~~22 (3) of subsection (k) of this section;~~

~~23 "(B) the name of each official of an Executive~~
~~24 agency with respect to whom any action was taken or~~
~~25 penalty imposed under such chapter;~~

1 ~~“(C) the nature of that action or penalty; and~~
 2 ~~“(D) such other matters as the Secretary con-~~
 3 ~~siders relevant and appropriate to provide full and com-~~
 4 ~~plete information with respect to his activities under~~
 5 ~~this subchapter.~~

6 ~~“§ 7175. Judicial review~~

7 ~~“(a) An employee, or applicant for employment, ag-~~
 8 ~~grieved by a final determination or order of the Board on~~
 9 ~~Employee Rights may file, within 30 days after the date~~
 10 ~~of that determination or order, in the district court of the~~
 11 ~~United States for the judicial district in which the alleged~~
 12 ~~violation or threatened violation of section 7173 (a) of this~~
 13 ~~title occurred or in which his official duty station was located~~
 14 ~~at the time of the alleged violation or threatened violation—~~

15 ~~“(1) a petition for a review of the determination or~~
 16 ~~order; or~~

17 ~~“(2) a complaint for a trial de novo on the viola-~~
 18 ~~tion or threatened violation of section 7173 (a) of this~~
 19 ~~title, which was the subject of the determination or order~~
 20 ~~of the Board.~~

21 ~~The petition or complaint shall name as defendant both the~~
 22 ~~Executive agency concerned and the Board on Employee~~
 23 ~~Rights. An official, or former official, of an Executive~~
 24 ~~agency—~~

25 ~~“(A) with respect to whom, in connection with the~~

1 ~~petition for review, there is involved an alleged viola-~~
 2 ~~tion or threatened violation by him of section 7173 (a)~~
 3 ~~of this title;~~

4 ~~“(B) with respect to whom the complaint for a~~
 5 ~~trial de novo, or the trial pursuant to the complaint, in-~~
 6 ~~volves an alleged violation or threatened violation by~~
 7 ~~him of section 7173 (a) of this title; or~~

8 ~~“(C) aggrieved by a final determination or order~~
 9 ~~of the Board, or part or application thereof, in connec-~~
 10 ~~tion with such alleged violation or threatened violation;~~
 11 ~~is entitled, in his individual capacity, to file an answer with~~
 12 ~~respect to such violation or threatened violation and partici-~~
 13 ~~pate as a party in the proceedings.~~

14 ~~“(b) If, after the expiration of 30 days after the date~~
 15 ~~of a final determination or order of the Board, a petition or~~
 16 ~~complaint with respect to such determination or order has~~
 17 ~~not been filed under subsection (a) of this section, an official~~
 18 ~~or former official of an Executive agency aggrieved by that~~
 19 ~~determination or order, or part or application thereof, may~~
 20 ~~file, within 30 days after the expiration of such 30-day~~
 21 ~~period, in the district court of the United States for the judi-~~
 22 ~~cial district in which the alleged violation or threatened vio-~~
 23 ~~lation of section 7173 (a) of this title occurred or in which~~
 24 ~~his official duty station was located at the time of the alleged~~

~~1 violation or threatened violation, a petition for review of~~
~~2 the determination or order, or part or application thereof.~~

~~3 "(e) A petition for review or complaint for trial de~~
~~4 novo filed under subsection (a) or (b) of this section shall~~
~~5 name as defendant both the Executive agency concerned and~~
~~6 the Board, and a copy thereof shall be served on the Execu-~~
~~7 tive agency concerned and the Board.~~

~~8 "(d) When a copy of a petition for review is served on~~
~~9 the Board, a certified copy of the record on which the final~~
~~10 determination or order of the Board is based shall be filed~~
~~11 with the court. On filing of a petition with the court, and~~
~~12 in its consideration of the petition, the court shall have~~
~~13 jurisdiction to—~~

~~14 "(1) issue such restraining order, interlocutory~~
~~15 injunction, permanent injunction, or mandatory injunc-~~
~~16 tion, as may be necessary and appropriate with respect~~
~~17 to any determination or order, or part or application~~
~~18 thereof, made by the Board which is under review;~~

~~19 "(2) affirm, modify, or set aside any such deter-~~
~~20 mination or order, or part or application thereof;~~

~~21 "(3) require the Board to make any determination~~
~~22 or order which it is authorized to make under section~~
~~23 7174 (j) of this title, but which it has failed or refused~~
~~24 to make; and~~

~~25 "(4) remand the matter to the Board for appropri-~~

~~1 ate action by the Board and the Executive agency~~
~~2 concerned in accordance with the decision of the court.~~
~~3 The reviewing court shall set aside any finding, conclusion,~~
~~4 determination, or order of the Board as to which a com-~~
~~5 plaint is made that is unsupported by substantial evidence~~
~~6 on the record considered as a whole.~~

~~7 "(e) On the filing of a complaint for a trial de novo,~~
~~8 the court shall have jurisdiction to—~~

~~9 "(1) try and determine the action, irrespective of~~
~~10 the existence or amount of pecuniary injury done or~~
~~11 threatened; and~~

~~12 "(2) issue such restraining order, interlocutory in-~~
~~13 junction, permanent injunction, or mandatory injunction,~~
~~14 or enter such other judgment or decree, as may be neces-~~
~~15 sary or appropriate to prevent the threatened violation~~
~~16 or to afford the plaintiff and others similarly situated~~
~~17 complete relief against the consequences of any violation.~~

~~18 The court shall decide all questions of law in any action~~
~~19 under this subsection. The court, upon application by either~~
~~20 party, shall order a trial by jury of the issues in any action~~
~~21 under this subsection.~~

~~22 "(f) With the written consent, filed with the court, of~~
~~23 an employee, applicant for employment, official of an Execu-~~
~~24 tive agency, or former official of an Executive agency ag-~~
~~25 grieved by a final determination or order of the Board, who~~

~~1 is entitled to file a petition for review, a complaint for a
2 trial de novo, or answer, or to participate as a party in any
3 proceeding, under this section, not more than one labor
4 organization, or association of supervisors, representing em-
5 ployees may intervene in connection with the review or the
6 trial de novo.~~

~~7 "§ 7176. General provisions-~~

~~8 "(a) An individual called on to participate in any phase
9 of an administrative or judicial proceeding under this sub-
10 chapter shall be free from restraint, coercion, interference,
11 intimidation, or reprisal in the course of, or because of, his
12 participation.~~

~~13 "(b) An employee or an official of an Executive agency
14 who is a party to the action, summoned, or assigned by
15 his agency to appear, including an appearance to give his
16 deposition, before the Board on Employee Rights, or before
17 the appropriate court, in connection with any matter before
18 the Board or the court under this subchapter, shall not incur
19 a loss of or reduction in any right, entitlement, or benefit as
20 an employee or official of that agency. A period of such
21 absence within his regularly scheduled tour of duty is service
22 performed by the employee or official while on official busi-
23 ness. Travel by the employee or official during a period of
24 such absence, whether or not performed within his regularly
25 scheduled tour of duty, is travel on official business.~~

~~1 "(c) On written application certifying his expenses and
2 charges filed with the Board on Employee Rights by an
3 attorney representing a party to the action who has appeared
4 before the Board, or the appropriate court, in connection
5 with any matter before the Board, or the court, or both, un-
6 der this subchapter, which has been determined by the Board
7 or the court, in favor of the party represented by the at-
8 torney, the Board may allow, at the conclusion of the rep-
9 resentation and in accordance with the regulations prescribed
10 under section 7174 (c) of this title, such remuneration to the
11 attorney as it considers reasonable and proper and shall cer-
12 tify to the Executive agency concerned the amount of the
13 attorney's remuneration granted by it. The agency shall pay
14 the certified amount of such remuneration, in accordance
15 with the following provisions:-~~

~~16 "(1) the agency shall charge against such certi-
17 fied amount of remuneration all sums previously paid
18 to the attorney by the party represented;~~

~~19 "(2) if the sums previously paid to the attorney
20 by that party for such representation equal or exceed
21 the certified amount of the attorney's remuneration, the
22 agency shall reimburse that party in that certified
23 amount; and~~

~~24 "(3) if the sums previously paid to the attorney
25 by that party for such representation are less than that~~

~~1 certified amount, the agency shall reimburse that party~~
~~2 in the amount paid by that party and shall pay to the~~
~~3 attorney an amount equal to the difference between the~~
~~4 certified amount of the attorney's remuneration and the~~
~~5 aggregate of the sums previously paid by that party to~~
~~6 the attorney."~~

~~7 (b) The analysis of chapter 71 of title 5, United States~~
~~8 Code, is amended by adding the following at the end thereof:~~

~~"SUBCHAPTER III—EMPLOYEE RIGHTS~~

~~"Sec.~~

~~"7171. Policy.~~

~~"7172. Definition.~~

~~"7173. Employee rights.~~

~~"7174. Board on Employee Rights.~~

~~"7175. Judicial review.~~

~~"7176. General provisions."~~

~~9 (c) Section 5316 of title 5, United States Code, is~~
~~10 amended by adding at the end thereof:~~

~~11 "(131) Members of the Board on Employee~~
~~12 Rights (3)."~~

~~13 SEC. 2. Subchapter III of chapter 71 of title 5, United~~
~~14 States Code, as added by this Act, shall apply only with re-~~
~~15 spect to acts, violations, threatened violations, grievances,~~
~~16 and other similar matters covered by such subchapter which~~
~~17 arise or occur on or after such date following the date of~~
~~18 enactment of this Act as the Board on Employee Rights,~~
~~19 established by the amendments made by the first section~~
~~20 of this Act, shall prescribe but in no event later than the~~

~~1 one hundred and eightieth day following such date of enact-~~
~~2 ment.~~

~~3 SEC. 3. Notwithstanding section 7174 of title 5, United~~
~~4 States Code, as added by the first section of this Act, the~~
~~5 terms of office of the three members first appointed to the~~
~~6 Board on Employee Rights shall end, as designated by the~~
~~7 President, one at the end of 2 years, one at the end of 4~~
~~8 years, and one at the end of 6 years.~~

~~9 That (a) chapter 71 of title 5, United States Code, is~~
~~10 amended by adding at the end thereof the following new~~
~~11 subchapter III:~~

~~12 "SUBCHAPTER III—EMPLOYEE RIGHTS~~

~~13 "§ 7171. Policy~~

~~14 "It is the policy of the United States, as an employer,~~
~~15 to assure that those officials of Executive agencies charged~~
~~16 with administrative or supervisory responsibility recognize~~
~~17 and protect the personal and individual rights, entitlements,~~
~~18 and benefits of employees of, and applicants for employment~~
~~19 in, Executive agencies.~~

~~20 "§ 7172. Definitions~~

~~21 "(a) For purposes of this subchapter—~~

~~22 "(1) the term 'Commission' means the United States~~
~~23 Civil Service Commission; and~~

~~24 "(2) the term 'official of an Executive agency'~~
~~25 means—~~

1 “(A) an officer of an Executive agency;

2 “(B) a commissioned or warrant officer of the
3 uniformed services; and

4 “(C) an individual acting or purporting to
5 act under the authority of an officer referred to in
6 subparagraph (A) or (B) of this section.

7 “(b) For the purposes of this subchapter, ‘Executive
8 agency’ includes the United States Postal Service.

9 “§ 7173. Employee rights

10 “(a) An official of an Executive agency may not—

11 “(1) require or request, or attempt to require or
12 request, an employee of, or an applicant for employment
13 in, an Executive agency to disclose his race, religion, or
14 national origin, or the race, religion, or national origin
15 of any of his forebears. This paragraph does not prohibit
16 inquiry concerning—

17 “(A) the citizenship of an employee or appli-
18 cant;

19 “(B) the national origin of an employee or
20 applicant when the inquiry is considered necessary
21 or advisable to determine suitability for assignment
22 to activities or undertakings related to the national
23 security of the United States, to law enforcement,
24 or to activities or undertakings of any nature out-
25 side the United States;

1 “(C) the race, religion, or national origin of an
2 employee or applicant when that matter is in issue
3 in an allegation or complaint of discrimination;

4 “(D) the race, religion, or national origin of an
5 employee or applicant when (i) that matter is di-
6 rectly related to or an integral part of scientific re-
7 search or program evaluation, (ii) appropriate safe-
8 guards have been instituted to preserve both the
9 voluntary participation and the anonymity of the
10 employee or applicant, and (iii) the inquiry has
11 been approved by the Civil Service Commission; or

12 “(E) the race of an employee or applicant
13 when made to satisfy the requirements of law pro-
14 viding preference for Indians in connection with
15 functions or services affecting Indians;

16 “(2) coerce, require, or request, or attempt to
17 coerce, require, or request, an employee of an Executive
18 agency to attend or participate in a formal or informal
19 meeting, assemblage, or other group activity held to
20 present, advocate, develop, explain, or otherwise cover
21 in any way, by lecture, discussion, discourse, instruction,
22 visual presentation, or otherwise, any matter or subject
23 other than—

24 “(A) the performance of official duties to

1 which the employee is or may be assigned in the
2 Executive agency; or

3 “(B) the development of skills, knowledge, or
4 abilities that qualify him for the performance of
5 those official duties;

6 “(3) coerce, require, or request, or attempt to
7 coerce, require, or request, an employee of an Executive
8 agency to—

9 “(A) participate in any way in an activity or
10 undertaking unless it is related to the performance
11 of official duties to which the employee is or may
12 be assigned in the Executive agency or related to
13 the development of skills, knowledge, or abilities
14 that qualify him for the performance of those official
15 duties; or

16 “(B) make a report concerning any activity
17 or undertaking of the employee not involving his
18 official duties, except—

19 “(i) when there is reason to believe that
20 the activity or undertaking conflicts with, or
21 adversely affects the performance of, his official
22 duties; or

23 “(ii) as authorized to the contrary under
24 paragraph (6) of this subsection.

25 This paragraph does not prohibit the use of appropriate

1 publicity to inform employees of requests for assistance
2 from public service programs or organizations;

3 “(4) require or request, or attempt to require or
4 request, an employee of, or an applicant for employ-
5 ment in, an Executive agency to submit to an interro-
6 gation or examination or to take a polygraph or psycho-
7 logical test designed to elicit from the employee or
8 applicant information concerning his personal relation-
9 ship with any individual related to him by blood or mar-
10 riage, his religious beliefs or practices, or his attitude or
11 conduct with respect to sexual matters. This paragraph
12 does not prohibit—

13 “(A) a physician from eliciting this informa-
14 tion or authorizing these tests in the diagnosis or
15 treatment of an employee or applicant in individual
16 cases and not pursuant to general practice or regu-
17 lation governing the examination of employees or
18 applicants, when the physician considers the infor-
19 mation necessary to enable him to determine
20 whether or not the employee or applicant is suffer-
21 ing from mental illness;

22 “(B) an official of an Executive agency from
23 advising an employee or applicant of a specific
24 charge of sexual misconduct made against the em-
25 ployee or applicant and giving him a full oppor-

1 tunity to refute the charge; or

2 “(C) an official of an Executive agency from
3 eliciting from an employee or applicant, in individ-
4 ual cases and not pursuant to general practice or
5 regulation, information concerning the personal re-
6 lationship of the employee or applicant with any
7 individual related to him by blood or marriage, when
8 the official considers the information necessary in
9 the interest of national security;

10 “(5) coerce or require, or attempt to coerce or
11 require, an employee of an Executive agency to invest
12 his earnings in bonds or other obligations or securities
13 issued by the United States or by an Executive agency,
14 or to make donations to any institution or cause of any
15 kind. This paragraph does not prohibit an official of an
16 Executive agency from calling meetings and taking
17 action appropriate to inform an employee of the op-
18 portunity—

19 “(A) voluntarily to invest his earnings in
20 bonds or other obligations or securities issued by the
21 United States or by an Executive agency; or

22 “(B) voluntarily to make donations to an insti-
23 tution or cause;

24 “(6) require or request, or attempt to require or
25 request, an employee of an Executive agency (other than

1 a Presidential appointee) to disclose his property or the
2 property of any member of his family or household. This
3 paragraph does not prohibit—

4 “(A) the Department of the Treasury or other
5 Executive agency from requiring an employee to
6 make such reports as may be necessary or appropri-
7 ate for the determination of his liability for taxes,
8 tariffs, customs duties, or similar obligations to the
9 United States; or

10 “(B) an official of an Executive agency from
11 requiring an employee who participates (other than
12 in a clerical capacity) in determination with respect
13 to—

14 “(i) a Government contract or grant;

15 “(ii) the regulation of non-Federal enter-
16 prise;

17 “(iii) the tax or other liability of any per-
18 son to the United States; or

19 “(iv) a claim that requires expenditure of
20 money of the United States;
21 from disclosing specific items of the property of
22 that employee, or specific items of the property of
23 any member of his family or household, that may
24 tend to indicate a conflict of interest with respect

1 to the performance of any of the official duties
2 to which the employee is or may be assigned.

3 As used in this paragraph, 'property' includes items
4 of property, income, and other assets, and the source
5 thereof, liabilities, and personal and domestic expendi-
6 tures;

7 "(7) prohibit or restrict, or attempt to prohibit
8 or restrict, the exercise by an employee of an Executive
9 agency of the right of reasonable communication with
10 any official of his agency; or

11 "(8) remove, suspend, or furlough from duty with-
12 out pay, demote, reduce in rank, seniority, status, pay,
13 or performance or efficiency rating, deny promotion to,
14 relocate, reassign, discipline, or discriminate in regard
15 to any employment right, entitlement, benefit, or term
16 or condition of employment of, an employee of an
17 Executive agency, or threaten to commit any of these
18 acts, by reason of—

19 "(A) the refusal or failure of the employee
20 to submit to or comply with any requirement, re-
21 quest, or action prohibited by this subsection; or

22 "(B) the exercise by the employee of any
23 right, entitlement, benefit, or other protection
24 granted or secured by this section and section 7175
25 of this title.

1 "(b) Subsection (a) of this section does not apply to—

2 "(1) the Central Intelligence Agency;

3 "(2) the National Security Agency;

4 "(3) the Federal Bureau of Investigation; or

5 "(4) any other Executive agency, or part thereof,
6 as the President, in the interest of national security,
7 may recommend to the Congress.

8 The exemption recommended by the President and trans-
9 mitted to Congress under paragraph (4) of this subsection
10 becomes effective at the end of the first period of 30 calendar
11 days of continuous session of Congress after the date on
12 which the recommendation is transmitted unless, between
13 the date of transmittal and the end of the 30-day period,
14 either the committee of the House of Representatives or the
15 committee of the Senate to which the recommendation has
16 been referred adopts a resolution specifically disapproving
17 the exemption so recommended and transmitted. The con-
18 tinuity of a session is broken only by an adjournment of
19 the Congress sine die. The days on which either House is
20 not in session because of an adjournment of more than 3 days
21 to a day certain are excluded in the computation of the
22 30-day period.

23 "(c) (1) An employee of, or an applicant for employ-
24 ment in, an Executive agency who claims to be aggrieved by
25 a violation or threatened violation of subsection (a) of this

1 section is entitled to file a grievance with the agency con-
 2 cerned not later than 15 days after the date of the violation
 3 or threatened violation.

4 “(2) If—

5 “(A) the decision on the grievance by the Execu-
 6 tive agency is adverse to the employee or applicant; or

7 “(B) after 60 days from the date the grievance is
 8 filed the Executive agency has not issued a decision on
 9 the grievance;

10 the employee or applicant is entitled to file a complaint with
 11 the Commission not later than 15 days after the adverse
 12 decision or the expiration of the 60-day period, as the case
 13 may be.

14 “§ 7174. *Appeal procedure*

15 “(a)(1) The Commission shall receive and investigate
 16 written complaints, filed under section 7173(c)(2) of this
 17 title, from or on behalf of an employee or applicant claiming
 18 to be aggrieved by a violation or threatened violation of sec-
 19 tion 7173(a) of this title. On receipt of such a complaint,
 20 the Commission immediately shall transmit a copy thereof
 21 to the head of the Executive agency concerned.

22 “(2) If the Commission determines, within 10 days
 23 after its receipt of the complaint, that the facts alleged in the
 24 complaint do not constitute a violation or threatened violation
 25 of section 7173(a) of this title with respect to the employee

1 or applicant, it may dismiss the complaint without a hearing.
 2 If the Commission dismisses the complaint, it shall notify
 3 all interested parties of the dismissal.

4 “(3)(A) If the Commission does not dismiss the com-
 5 plaint within 10 days after its receipt thereof, it shall—

6 “(i) conduct a hearing on the complaint within 30
 7 days after its receipt of the complaint;

8 “(ii) furnish notice of the time, place, and nature
 9 of the hearing thereon to all interested parties; and

10 “(iii) make a final determination within 90 days
 11 after its receipt of the complaint.

12 “(B) If a hearing on the complaint is to be conducted—

13 “(i) the Executive agency concerned shall file an
 14 answer to the complaint and participate as a party in
 15 the hearing; and

16 “(ii) any official of that agency, who is alleged, in
 17 the complaint or during the course of the hearing, to have
 18 committed a violation or threatened violation of section
 19 7173(a) of this title, is entitled, in his individual capac-
 20 ity, to file an answer to the allegation and participate as
 21 a party in the hearing.

22 “(b) With the written consent of the employee or ap-
 23 plicant concerned, filed with the Commission, an officer or
 24 representative of not more than one labor organization, or
 25 association of supervisors, representing employees shall be

1 given an opportunity to participate in each hearing conducted
2 under this section, through submission of written data, views,
3 or arguments, and, in the discretion of the Commission, with
4 opportunity for oral presentation.

5 “(c) If, after hearing, the Commission determines that
6 a violation of section 7173(a) of this title has not occurred
7 or is not threatened, the Commission shall state its determina-
8 tion and notify all interested parties of the determination.
9 Each such determination, including a dismissal by the
10 Commission of the complaint without a hearing, constitutes
11 a final decision of the Commission for purposes of judicial
12 review.

13 “(d)(1) If, after hearing, the Commission determines
14 that a violation of section 7173(a) of this title has been
15 committed or threatened by an official of an Executive
16 agency not subject to chapter 47 of title 10, the Commission
17 shall—

18 “(A) require the head of the Executive agency con-
19 cerned to issue and cause to be served immediately on
20 the official an order requiring him to cease and desist
21 from the unlawful act or practice which constitutes a
22 violation; and

23 “(B) endeavor to eliminate the unlawful act or
24 practice by informal methods of conference, conciliation,
25 and persuasion.

1 “(2) If, after hearing, the Commission determines that
2 a violation of section 7173(a) of this title has been committed
3 or threatened by an official of an Executive agency not sub-
4 ject to chapter 47 of title 10, the Commission may, without
5 regard to chapter 75 of this title, require the head of the
6 Executive agency concerned to—

7 “(A)(i) in the case of the first offense by such an
8 official, other than any official appointed by the Presi-
9 dent, by and with the advice and consent of the Senate,
10 issue an official reprimand against the official or order
11 the suspension without pay of the official from the posi-
12 tion or office held by him for a period of not to exceed
13 15 days; and

14 “(ii) in the case of a second or subsequent offense
15 by the official, order the suspension without pay of the
16 official from the position or office held by him for a period
17 of not less than 15 nor more than 60 days or, when the
18 Commission considers the second or subsequent offense to
19 be sufficiently serious to warrant the action, order the
20 removal of the official from the position or office; and

21 “(B) in the case of an offense by such an official
22 appointed by the President, by and with the advice and
23 consent of the Senate, transmit a report concerning the
24 violation to the President and Congress.

25 “(3) A reprimand or order under paragraph (2)(A)

1 of this subsection does not become effective until the expir-
 2 ation of the period within which the official aggrieved by
 3 the reprimand or order may file a petition for review or
 4 complaint for trial de novo or, if such a petition or com-
 5 plaint is filed, until the court makes a final disposition of
 6 the case.

7 “(f)(1) If, after hearing, the Commission determines
 8 that a violation of section 7173(a) of this title has been
 9 committed or threatened by an official of an Executive agency
 10 subject to chapter 47 of title 10, the Commission shall—

11 “(A) submit a report thereon to the Secretary con-
 12 cerned, as defined by section 101(8) of title 10;

13 “(B) endeavor to eliminate the unlawful act or
 14 practice that constitutes a violation by informal methods
 15 of conference, conciliation, and persuasion; and

16 “(C) refer its determination and the record in
 17 the case to such Secretary concerned who shall take
 18 immediate steps to dispose of the matter under chapter
 19 47 of title 10.

20 “(2) The action referred to in paragraph (1)(C) of
 21 this subsection may not be taken by such Secretary concerned
 22 until the expiration of the period within which the official
 23 aggrieved by the reference to such Secretary by the Com-
 24 mission under that paragraph may file a petition for review
 25 or complaint for trial de novo or, if such a petition or com-

1 *plaint is filed, until the court makes a final disposition of*
 2 *the case.*

3 “(g)(1) The Commission shall submit, not later than
 4 March 31 of each year, to the President for transmittal to
 5 Congress a report on its activities under this subchapter dur-
 6 ing the immediately preceding calendar year, including—

7 “(A) the types and kinds of complaints filed with
 8 the Commission;

9 “(B) the determinations, orders, and actions of
 10 the Commission with respect to the complaints;

11 “(C) the name of each official of an Executive
 12 agency with respect to whom an action was taken or
 13 penalty imposed under subsection (e) of this section;

14 “(D) the nature of that action or penalty; and

15 “(E) such other matters as the Commission con-
 16 siders relevant and appropriate to provide full and com-
 17 plete information with respect to the operation and ad-
 18 ministration of this subchapter.

19 “(2) The Secretary concerned shall submit, not later
 20 than March 31 of each year, to the President for transmittal
 21 to Congress, a report on his activities under this subchapter
 22 during the immediately preceding calendar year, including—

23 “(A) the disposition, under chapter 47 of title 10,
 24 of matters referred to the Secretary concerned under
 25 subsection (f)(1)(C) of this section;

1 “(B) the name of each official of an Executive
2 agency with respect to whom an action was taken or
3 penalty imposed under that chapter;

4 “(C) the nature of that action or penalty; and

5 “(D) such other matters as the Secretary concerned
6 considers relevant and appropriate to provide full and
7 complete information with respect to his activities under
8 this subchapter.

9 “§ 7175. *Judicial review*

10 “(a) An employee, or applicant for employment, ag-
11 grieved by a final determination or order of the Commission
12 may file, within 30 days after the date of the determina-
13 tion or order, in the district court of the United States for
14 the judicial district in which the alleged violation or threat-
15 ened violation of section 7173(a) of this title occurred or
16 in which his official duty station was located at the time of
17 the alleged violation or threatened violation—

18 “(1) a petition for a review of the determination or
19 order; or

20 “(2) a complaint for a trial de novo on the viola-
21 tion or threatened violation of section 7173(a) of this
22 title, that was the subject of the determination or order
23 of the Commission.

24 The petition or complaint shall name as defendant both the

1 Executive agency concerned and the Commission. An official,
2 or former official, of an Executive agency—

3 “(A) with respect to whom, in connection with the
4 petition for review, there is involved an alleged violation
5 or threatened violation by him of section 7173(a) of
6 this title;

7 “(B) with respect to whom the complaint for a trial
8 de novo, or the trial pursuant to the complaint, involves
9 an alleged violation or threatened violation by him of sec-
10 tion 7173(a) of this title; or

11 “(C) aggrieved by a final determination or order
12 of the Commission, or part or application thereof, in
13 connection with the alleged violation or threatened vio-
14 lation;

15 is entitled, in his individual capacity, to file an answer with
16 respect to the violation or threatened violation and participate
17 as a party in the proceedings.

18 “(b) If, after the expiration of 30 days after the date
19 of a final determination or order of the Commission, a petition
20 or complaint with respect to the determination or order has
21 not been filed under subsection (a) of this section, an official
22 or former official of an Executive agency aggrieved by the
23 determination or order, or part or application thereof, may
24 file, within 30 days after the expiration of the 30-day period,

1 in the district court of the United States for the judicial
 2 district in which the alleged violation or threatened violation
 3 of section 7173(a) of this title occurred or in which his
 4 official duty station was located at the time of the alleged
 5 violation or threatened violation, a petition for review of the
 6 determination or order, or part or application thereof.

7 “(c) A petition for review or complaint for trial de
 8 novo filed under subsection (a) or (b) of this section shall
 9 name as defendant both the Executive agency concerned and
 10 the Commission, and a copy thereof shall be served on the
 11 Executive agency concerned and the Commission.

12 “(d) When a copy of a petition for review is served on
 13 the Commission, a certified copy of the record on which the
 14 final determination or order of the Commission is based shall
 15 be filed with the court. On filing of a petition with the court,
 16 and in its consideration of the petition, the court shall have
 17 jurisdiction to—

18 “(1) issue such restraining order, interlocutory
 19 injunction, permanent injunction, or mandatory injunc-
 20 tion, as may be necessary and appropriate with respect
 21 to any determination or order, or part or application
 22 thereof, made by the Commission that is under review;

23 “(2) affirm, modify, or set aside any such deter-
 24 mination or order, or part or application thereof; and

25 “(3) remand the matter to the Commission for ap-

1 appropriate action by the Commission and the Executive
 2 agency concerned in accordance with the decision of the
 3 court.

4 The reviewing court shall set aside any finding, conclusion,
 5 determination, or order of the Commission as to which a com-
 6 plaint is made that is unsupported by substantial evidence
 7 on the record considered as a whole.

8 “(e) On the filing of a complaint for a trial de novo,
 9 the court has jurisdiction to—

10 “(1) try and determine the action, irrespective of
 11 the existence or amount of pecuniary injury done or
 12 threatened; and

13 “(2) issue such restraining order, interlocutory in-
 14 junction, permanent injunction, or mandatory injunction
 15 or enter such other judgment or decree, as may be neces-
 16 sary or appropriate to prevent the threatened violation
 17 or to afford the plaintiff and others similarly situated
 18 complete relief against the consequences of a violation.

19 The court shall decide all questions of law in any action
 20 under this subsection. The court, on application by either
 21 party, shall order a trial by jury of the issues in an action
 22 under this subsection.

23 “(f) With the written consent, filed with the court, of
 24 an employee, applicant for employment, official of, or former
 25 official of, an Executive agency, aggrieved by a final deter-

1 mination or order of the Commission, who is entitled to file a
 2 petition for review, a complaint for a trial de novo, or
 3 answer, or to participate as a party in any proceeding, under
 4 this section, not more than one labor organization, or associ-
 5 ation of supervisors, representing employees may intervene
 6 in connection with the review or the trial de novo.

7 **“§ 7176. General provisions**

8 “(a) An individual called on to participate in any phase
 9 of an administrative or judicial proceeding under this sub-
 10 chapter shall be free from restraint, coercion, interference,
 11 intimidation, or reprisal in the course of, or because of, his
 12 participation.

13 “(b) An employee or an official of an Executive agency
 14 who is a party to the action, summoned to appear, or assigned
 15 by his agency to appear, including an appearance to give his
 16 deposition, before the Commission, or before the appropriate
 17 court, in connection with any matter before the Commission
 18 or the court under this subchapter, shall not incur a loss of,
 19 or reduction in, any right, entitlement, or benefit as an em-
 20 ployee or official of that agency. A period of such absence
 21 within his regularly scheduled tour of duty is service per-
 22 formed by the employee or official while on official business.
 23 Travel by the employee or official during a period of such an
 24 absence, whether or not performed within his regularly
 25 scheduled tour of duty, is travel on official business.

1 “(c) On written application certifying his expenses and
 2 charges filed with the Commission by an attorney represent-
 3 ing a party to the action who has appeared before the Com-
 4 mission, or the appropriate court, in connection with any
 5 matter before the Commission, or the court, or both, under
 6 this subchapter, that has been determined by the Commission
 7 or the court, in favor of the party represented by the at-
 8 torney, the Commission may allow, at the conclusion of the
 9 representation, such remuneration to the attorney as it con-
 10 siders reasonable and proper and shall certify to the Execu-
 11 tive agency concerned the amount of the attorney's remunera-
 12 tion granted by it. The agency shall pay the certified amount
 13 of the remuneration, in accordance with the following pro-
 14 visions:

15 “(1) the agency shall charge against such certified
 16 amount of remuneration all sums previously paid to the
 17 attorney by the party represented;

18 “(2) if the sums previously paid to the attorney by
 19 that party for such representation equal or exceed the
 20 certified amount of the attorney's remuneration, the
 21 agency shall reimburse that party in that certified amount;

22 “(3) if the sums previously paid to the attorney
 23 by that party for such representation are less than that
 24 certified amount, the agency shall reimburse that party
 25 in the amount paid by that party and shall pay to the

1 attorney an amount equal to the difference between the
 2 certified amount of the attorney's remuneration and the
 3 aggregate of the sums previously paid by that party to
 4 the attorney.".

5 (b) The analysis of chapter 71 of title 5, United States
 6 Code, is amended by adding the following at the end thereof:

"SUBCHAPTER III—EMPLOYEE RIGHTS

"Sec.

"7171. Policy.

"7172. Definitions.

"7173. Appeal procedure.

"7174. Board on Employee Rights.

"7175. Judicial review.

"7176. General provisions.".

7 *SEC. 2. Subchapter III of chapter 71 of title 5, United*
 8 *States Code, as added by this Act, shall apply only with*
 9 *respect to acts, violations, threatened violations, grievances,*
 10 *and other similar matters covered by such subchapter which*
 11 *arise or occur on or after the date of enactment of this Act.*

[COMMITTEE PRINT]

SEPTEMBER 13, 1974

Union Calendar No.

93D CONGRESS
2D SESSION

H. R. 1281

[Report No. 93—]

A BILL

To amend title 5, United States Code, to protect civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights, to prevent unwarranted governmental invasions of their privacy, and for other purposes.

By Mr. CHARLES H. WILSON of California

JANUARY 3, 1973

Referred to the Committee on Post Office and Civil Service

SEPTEMBER , 1974

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

THE WHITE HOUSE

WASHINGTON

September 19, 1974

MEMORANDUM FOR: GEOFFREY SHEPARD
THROUGH: MAX FRIEDERSDORF
FROM: GENE AINSWORTH
SUBJECT: H. R. 1281

The House Post Office and Civil Service Committee is in the final stages of mark-up of this legislation and we need to present a solid Administration position to Republicans on the Committee prior to their next meeting.

I am attaching a memorandum from Tony Raymond of the Committee staff. Could you review this material and let me know what our position is so I can brief our Republicans.

THADDEUS J. DULSKI, N.Y., CHAIRMAN

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JAMES M. COLLINS, TEX.
GENE TAYLOR, MO.

U.S. House of Representatives
COMMITTEE ON POST OFFICE AND CIVIL SERVICE
207 CANNON HOUSE OFFICE BUILDING
Washington, D.C. 20515

September 17, 1974

MEMORANDUM TO: Max Friedersdorf
FROM: Tony Raymond *TR*
SUBJECT: Committee Print dated September 13, 1974 on
H.R. 1281

Attached is the above mentioned Committee Print on H.R. 1281, in addition to a list delineating the remaining four Administration objections.

This language is identical to the draft language of the President's Commission on Privacy, with the exception of four provisions and language relating to the Postal Service, as I will mention below.

A new Committee Print will be available tomorrow, incorporating objections numbered 1, 3 and 4. Number 2 is being deleted as well as lines 7 and 8 on Page 26, relating to the U. S. Postal Service.

I have discussed the new Committee Print which will be issued tomorrow with Tony Mondello, General Counsel of the Civil Service Commission and he tells me he will recommend to the Chairman of the Civil Service Commission to continue in opposition to this legislation because of the inclusion of numbers 1, 3 and 4. He is to prepare a letter stating such objections and transmit it to the Committee tomorrow.

Please inform me what position if any the Administration intends to take on this legislation, so that we might be able to properly brief our Republican members.

This proposal is scheduled for Committee consideration on Thursday, September 19.

After a number of meetings between the Civil Service Commission and the Subcommittee Staff, Administration objections to the bill as presently drafted in the Committee print have greatly diminished.

The remaining Administration objections to the Committee print of H. R. 1231 are as follows:

- cps* 1) Section 7173(b) (page 33) -- this section allows the appropriate House or Senate Committee to disapprove the President's recommendation of exempting an agency other than the CIA, FBI, or NSA from the provisions of this act. While objecting to the concept of any Congressional disapproval, the Administration feels that at a minimum any disapproval should come from only the entire House or Senate.
- mr* 2) Section 7175(a) (2) (page 40) -- the Commission objects to allowing a trial de novo as part of Judicial review. The Commission points out that in current appeals procedures, plaintiffs only have a right to petition for a review of the record that has already been made.
- cps* 3) Section 7175(d) (3) (page 42) -- the Commission feels that in allowing the court to mandate the Commission to take particular actions (including imposing sanctions) it interferes with the legitimate purview of labor management relations. **Sanctions -*
- cps* 4) Section 7176(c) (page 45) -- the Commission is opposed to attorneys fees if the plaintiff wins in court.

The "new" Comm. Print will include objections numbered #1, 3, 4. #2 will be deleted. Lines 7 and 8, Page 26, will also be struck from the bill.



May 21, 1976

TO: Robert K. Wolthuis
White House Staff
Assistant

FROM: Michael M. Uhlmann
DEPARTMENT: Justice

HIGHLIGHTS

On Wednesday, by a vote of 72 to 22, the Senate passed Senate Resolution 400 which establishes a standing 15 member oversight committee for the national intelligence community. This newly authorized Select Committee on Intelligence will also have budgetary and legislative jurisdiction over the intelligence activities of the FBI.

The Senate Judiciary Committee has scheduled a hearing on S. 495, the Watergate Reform Act, on Wednesday, May 26 and has asked Justice to provide the lead witness. The bill was reported by the Senate Government Operations Committee May 12, and was referred to Senate Judiciary with a reporting date of June 11.

The House Judiciary Committee has scheduled a mark-up session next Tuesday for H.R. 214, the "Right to Privacy Act of 1976". In its present form the bill would substantially hamper law enforcement efforts by restricting the availability of financial records, communication toll data, credit data and mail covers. We are making known our views to the Committee.

In compliance with the Budget Act, the Department has forwarded to the Congress legislative proposals to extend the authorizations for appropriations for the Juvenile Justice and Delinquency Prevention Act and the Drug Enforcement Administration.

COMPLETED HEARINGS

5/17/76	Exemptions for access to materials - S. 2652	S. Interior & Insular Affairs Comm.,	Peter Taft, AAG Lands
5/18/76	S. 1130 - Tenure of Chief District Judges	S. Judiciary Comm., Subc. on Improvement in Judiciary Machinery	Ramom Child, U.S. Attorney, Utah & James D. O'Brien, Acting DAAG, Tax Division

