



UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D.C. 20415

CHAIRMAN

October 10, 1974

Honorable Roy L. Ash  
Director  
Office of Management and Budget

Attention: Assistant Director for  
Legislative Reference

Dear Mr. Ash:

This is in reply to your request for the views of the Civil Service Commission on enrolled bill H.R. 12471, "To amend section 552 of title 5, United States Code, known as the Freedom of Information Act."

The enrolled bill makes a number of amendments to section 552 of title 5, the "Freedom of Information Act", to strengthen the requirements for access by the public to agency records. The bill strengthens the section's requirement for publication of agency indexes identifying information for the public, changes the present law requirement that a request for information from an agency be for "identifiable records" to a requirement that the request only "reasonably describe" the records, and requires that each agency issue regulations establishing for recovery of only the direct costs of search and duplication of records. The bill authorizes court review de novo of requests for records in camera, sets a 30-day time limitation for response by an agency to a complaint under the Freedom of Information law, and provides that court appeals should be expedited. The court is authorized to assess reasonable attorney fees and other litigation costs of complainants. The court is authorized to make a finding whether the circumstances surrounding the withholding of information raise questions whether agency personnel acted arbitrarily or capriciously. 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 of the agency concerned and to the responsible official or employee, and the administrative authority shall promptly take the disciplinary action recommended by the Commission.

The bill establishes deadlines for agency determinations on requests, and revises the national defense and foreign policy exemption to require establishment of criteria. The exemption for investigatory records is also amended limiting the exemption to cases where their disclosure would interfere with enforcement proceedings, deprive a person of a fair trial, be an invasion of privacy, disclose the identity of a confidential source, disclose investigative techniques and procedures, or endanger law enforcement personnel.

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The bill provides that any reasonably segregable portion of a record shall be made available to a requester when the other portions are exempt. Annual reports of actions under the legislation are required from all agencies and the definition of "agency" is expanded to include any executive agency, military department, Government corporation, Government-controlled corporation, or other establishment in the executive branch or any independent regulatory agency.

The Commission understands that the Department of Justice has drafted a veto message objecting to provisions of the bill relating to judicial review of classification of information, disclosure of investigatory law enforcement files, the administrative time limits established by the bill and the criteria for establishment of fee schedules. We concur in these objections and also submit the following comments.

Our primary concern is with protection of the privacy of Federal employees. While the bill purports to exempt from disclosure material which would "constitute an unwarranted invasion of personal privacy", (Paragraph (7)(C) on investigative records) the term "unwarranted" is undefined. Court cases under the Freedom of Information Act have construed the exemptions narrowly and we may thus assume that part of the exemption will be so construed. In addition the Committee report states (regarding another exemption in Paragraph (7)) "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." This language can be used to further narrow Paragraph (7)(C) and may be interpreted to imply that only the confidential source of such material may be protected but not the "confidential information" itself. In addition, the bill would require a paragraph-by-paragraph and perhaps, sentence-by-sentence determination of exemption of material including such clearly personal matters as medical reports.

Accordingly, the Commission recommends that the President veto enrolled bill H.R. 12471.

By direction of the Commission:

Sincerely yours,

*Jayne B. Spain*  
Acting  
Chairman

