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## A Regettable Veto

PRESIDENT FORD'S assurances of openness in government were dealt a serious blow by his decision Thursday night to veto the amendments to the Freedom of Information Act. Those amendments, intended to make it easier for citizens and the press to learn what is going on within government, could have played an important role in bringing about that promised openness. Congress was willing; the amendments passed both houses by substantial margins. But Mr. Ford chose instead to accept the counsel of the bureaucracy that these changes in the law somehow menaced the operation of government.

The section that caused the President to bring down the weight of his veto power provides that documents that are stamped "secret" must be proved to contain valid secrets if a citizen or a reporter seeks to inspect them. An orderly mechanism was provided for seeing this purpose through. The legislation required that, when a dispute arose over such a document, a federal district court judge would inspect the document in private and determine whether it was in the public interest for the document to be released.

There were other provisions of the act, all of them of paramount importance in the effort to make the gov-

ernment more accountable to those it seeks to serve. The new legislation would have reduced the number of days within which an agency would be required to say whether it intended to provide the public with a previously withheld document. The FBI and other investigative agencies would no longer have been able to withhold material unless they could justify doing so on the grounds that a current investigation or a defendant's rights would be compromised. And, perhaps most important of all from the bureaucrat's vantagepoint, if an official withheld a document and the court decided the document should not have been withheld, the official might be required by the Civil Service Commission to give an account of his actions.

All of these provisions were in the spirit of the kind of relationship between government and the public that Mr. Ford assured the Congress he wanted when he made his first appearance before a joint session only days after taking office. Now he has vetoed a piece of legislation that sought to overhaul a well-intentioned law that has languished ineffectively for nearly a decade. In so doing, the President has put it up to both houses of Congress to muster the votes to make the Freedom of Information Act a more effective servant of the public's right to know.

# The Washington Post

AN INDEPENDENT NEWSPAPER

## Federal Files: Freedom of Information...

JUST BEFORE the election recess, President Ford used his power of veto and sent back to the Congress a piece of very important legislation, the 1974 amendments to the Freedom of Information Act. Those amendments were important because they strengthened a law that was fine in principle and purpose but poor in practical terms. The Freedom of Information Act had been enacted in 1966 in the hope of making it possible for the press and the public to obtain documents from within government to which they are entitled. Because of cumbersome provisions of the act, however, obtaining such information proved very difficult.

This year, after long hearings, much haggling between House and Senate and two resounding votes, a series of amendments was ready for presidential signature. They shortened the amount of time a citizen would be required to wait for the bureaucracy to produce a requested document. They removed some restrictions on the kinds of information that could be obtained, and they placed sanctions on bureaucrats who tried to keep information secret that should be released in the public interest. In light of President Ford's previous statements in support of openness in government, it was assumed that the President would welcome this legislation and sign it into law. Instead, sadly, Mr. Ford yielded to the arguments of the bureaucracy and vetoed the legislation.

Since then, a number of journalists' and citizens' groups have criticized that action by the President and urged Congress to override the veto. Today in the House and tomorrow in the Senate, those votes are scheduled to take place. We would urge a strong vote in support of the legislation, particularly in light of two recent disclosures made possible by the Freedom of Information Act.

Recently, a Ralph Nader-supported group on tax reform turned up the fact the Nixon White House instigated Internal Revenue Service investigations of social action groups on the left and in the black community. The absurdity of the exercise is illustrated by the fact that the Urban League was among the targets, lumped in as "radical" along with several social organizations

that hardly merit either the label or the attention they were given by IRS. As we have had occasion to say in the past, the tax laws were not intended to be used for political harassment. The interesting point about these latest disclosures is that they were made possible by the utilization of the Freedom of Information Act.

In the same vein, the Justice Department released a report earlier this week on the operations of the counter intelligence operations of the FBI. Much of this information about the use of dirty tricks against the far left and the far right had been revealed earlier this year, again because of action taken under the Freedom of Information Act. Attorney General William Saxbe felt compelled, on the basis of what the Justice Department had been forced to release about the program, to order a study of what the FBI had done. Mr. Saxbe found aspects of the program abhorrent. But FBI director Clarence M. Kelley actually defended the practices of his predecessor, J. Edgar Hoover. This is a good example of how important it is that this country have a strong Freedom of Information law that will make it possible for the public to learn of such activities—and such attitudes on the part of officials in sensitive and powerful jobs—and to learn of them as quickly as possible.

The Freedom of Information Act is not a law to make the task of journalists easier or the profits of news organizations greater. It is, in other words, not special interest legislation in the sense that the term is ordinarily used. It is special interest legislation in that it is intended to assist the very special interest of the American people in being better informed about the processes and practices of their government. This is a point President Ford's advisers missed badly at the time of the veto. One of them is alleged to have said that if the President vetoed the bill, "who gives a damn besides The Washington Post and the New York Times?" The truth of the matter is that this legislation goes to the heart of what a free society is about. When agencies of government such as the FBI and IRS can engage in the kind of activity just revealed, it is serious business. That's why we should all give a damn—especially those who are to cast their votes today and tomorrow.

## ...And the Right to Privacy

MORE THAN ONE basic question of federal information policy will be before Congress this week as the Senate and House take up S. 3418 and H.R. 16373. These are the so-called "privacy bills" which would set rules to govern the multitude of federal files on individuals and give citizens far more control over what information about them is collected by the government and how that personal data is used.

While S. 3418 is by far the broader bill, both measures would inject a new sensitivity to individual rights into all of the record-keeping practices of the entire federal establishment. As with any legislation of such enormous scope, there are substantial disagreements on some significant points. Those disputes should not, however, be allowed to obscure the important and encouraging fact that, after years of work, an impressive array of legislators, administrators and citizen experts have reached general accord on several basic principles to govern federal data banks.

including a near-total exemption for the CIA and Secret Service. This approach seems unwise because exempting agencies rather than types of records is likely to encourage more requests for special treatment.

One particular area of dispute, especially in the House, is whether individuals should be allowed to review information given in confidence in connection with federal employment, promotion and security investigations. The challenge here is to strike a balance between two competing interests: the individual's right to assurance of fair treatment, and the government's need to obtain candid assessments of a person's qualifications for a position of trust. Full individual access to confidential reports could create many difficulties. On the other hand, an amendment to be proposed by Rep. John Erlenborn (R-Ill.) would go too far by exempting from disclosure all information gained in confidence. Experience with the Fair Credit Reporting Act, which allows citizens to learn the gist of the information but not the source, suggests that a middle ground can be found.

# LETTERS TO THE EDITOR

## Congress and the Freedom of Information Act

This week Congress will vote to sustain or to override President Ford's veto of the Freedom of Information Act amendments, and in so doing will put itself on record either as endorsing openness in government or as sanctioning bureaucratic cover-up.

The Freedom of Information Act amendments, which passed both Houses of Congress with only two dissenting votes, provide a fair and workable mechanism for releasing government information to the public. The amendments were deemed necessary to clarify congressional intent that government withholding be the exception, not the rule, and to plug up some of the act's procedural loopholes.

In his veto message of October 17, President Ford raised three objections to the amendments. When a government agency claims information is exempt and the claim is challenged, courts are given authority to examine the disputed documents. In such a proceeding the government has the burden of proving that the information falls under a legitimate exemption. President Ford objects to placing the burden of proof on the government, proposing instead that the court should be required to uphold a govern-

ment classification as long as there is a "reasonable basis" to support it.

The effect of the President's proposed alteration would be to uphold all government classification except the most blatantly frivolous. The executive branch would continue to have a virtual carte blanche to withhold information from the public under the guise of "national security," and the public would remain in the dark.

The President's second objection concerns the provision exempting investigatory records compiled for law enforcement purposes. While the 1966 Freedom of Information Act allows a blanket exemption for any files falling into this category, the new amendments require that the government specify some harm in order to claim the exemption. The rationale behind the harm requirement lies in many volumes of hearings where public witnesses detailed the types of requests denied under this exemption. Included were such routine "law enforcement" activities as meat inspection, reports, reports concerning safety in factories under the Occupational Health and Safety Act, correspondence between the National Highway Traffic Safety Administration and automobile manu-

facturers concerning automobile safety defects, reports on safety and medical care in nursing homes receiving medicare funds, and many others.

President Ford's final objection to the legislation concerns the time limits for government response to requests under the act. Although the vetoed bill contains a provision for extensions, which allows up to two calendar months for agency replies, the President labeled these time limits "unrealistic." The lack of time limits in the present Freedom of Information Act has led government agencies to withhold information through the process of repeated delays, often a year or more. Since the act is routinely used by newspaper reporters and public interest groups concerned with timely issues, delay can easily amount to effective denial.

The public needs a fair Freedom of Information Act. Congress has done a commendable job in shaping and passing such an act. It remains to be seen whether Congress will ensure its enactment by voting to override this veto.

Elizabeth Langer,  
Legislative Director,  
Consumer Federation of America,  
Washington

# White House Acts to Tighten Security

By Jack Anderson

Less than three months after President Ford promised he would run an open White House, he vetoed a Freedom of Information bill, which would have given the public more access to government documents.

The veto was accompanied by a move inside the White House to tighten security clearances. A memo, intended for the eyes only of staff chief Donald Rumsfeld, called for establishing procedures "to ensure that only cleared personnel deals with national security materials."

The memo proposed "a system," which would "continually verify" the tight security. It was necessary, stressed the memo, "to be certain that no one who has access to national security matters is not properly cleared."

Both the veto and the security crackdown are intended to protect diplomatic and military secrets, a White House spokesman explained.

Of course, we don't wish to jeopardize the nation's security. But in the past, our leaders have used security regulations to censor the news and protect themselves. They have swept their blunders and embarrassments, their inefficiency and corruption under the secrecy stamp.

There are surprisingly few

documents that must be kept secret in the interest of national security. The number doesn't even begin to approach the 20 million documents and papers that the government hides from the people.

President Ford, who started his presidency with such openness, has been listening lately to Henry A. Kissinger. The Secretary of State gets highly excitable over news leaks, which he fears could hamper his personal diplomacy.

His howls about leaks helped to stimulate the wiretaps and other excesses of the Nixon administration. Now he is again in an uproar over leaks. He is particularly upset over our stories, quoting from secret documents on the Cyprus crisis and African policy.

On Oct. 7, he slashed cable distribution to the various bureaus. The European Affairs Bureau, for example, was cut from 30 to six copies of incoming cables. This was accompanied by a strict warning not to circumvent the limitation by Xeroxing secret cables.

Top aides have also been making the rounds of underlings to discuss the leaks and how much Kissinger detests them.

"It's the old Nixon paranoia," one State Department official told us. "The secretary believes we're all out to get him. He runs

foreign affairs like a mid 19th century German diplomat."

Footnote: It should be added, of course, that Kissinger's diplomatic style continues to produce amazing results.