CONGRESSIONAL RECORD—SENATE 3603

October 17, 1974

FREEDOM OF INFORMATION ACT

Mr. MUSKIE. Mr. President, the Senate and House have sent to the President a bill to insure greater openness and public participation in the way our Government is run. The amendments to the Freedom of Information Act of 1966 are a most significant product of the post-Watergate period because they will bring the people closer to the materials, facts and documents on which officials in the Government base their decisions and policies.

That legislation may be in jeopardy. While it was sent to the President on October 16, it is still uncertain whether he will sign the measure into law or return it to the Congress with a veto. Unfortunately, the Congress will meet again on Saturday, and Senator Ford could simply let the bill sit on his desk to die by the pocket veto.

This would be a serious blow to our Government as we attempt to restore public confidence through more open processes.

Congress cannot override a pocket veto. Instead we would have to wait until next session and begin again with a new bill.

We must not delay the people's opportunity to know more about their Government, a right that has been eroded by too little candor and too much secrecy.

It would be a regrettable irony if a decision to deny the people greater access to their Government is decided without further debate behind closed doors of the White House by a new administration, once recently pledged to openness and candor.

I want to take this opportunity to extend my congratulations and appreciation to my friend and able colleague, the senior Senator from Massachusetts (Mr. KENNEDY) for the dedicated contribution he has made to these important improvements of the Freedom of Information Act.

No one can underestimate the diligence and concern with which he, the other members of the Committee on the Judiciary, the Senate and House conference, have worked to insure that the changes made in the 1967 act will, in fact, further the vital work of making Government more open to public scrutiny and making the conduct of the public business a subject for informed public comment.

There is a very rare and important opportunity to correct the defects we discovered in the administration of the act during joint hearings I conducted with Senator Kennedy and Senator Enrari last year. In many important procedural areas the conference report on H.R. 12971 will close loopholes through which agencies were evading their duties in that case which was somewhat tenuous.

The price of a court suit has too long been a deterrent to legitimate citizens contesting Government secrecy claims that are not quite legitimate. The legislation would institute a system to award costs and attorneys' fees to plaintiffs who successfully contest agency withholding of information. Additional changes will require agencies to respond promptly to requests for access to information. They will help bar the stalling tactics which too often have used requests for material until the material loses its timeliness to an issue under public debate. And they provide long-overdue assurance that agencies will report to the Congress on their policies and actions in handling Freedom of Information Act cases.

In one major respect this legislation responds to a situation in the existing law which was illustrated in the case of Environmental Protection Agency against Patay T. Mink, and others, decided by the Supreme Court on January 22, 1973.

In that case, 32 Members of Congress, bringing suit as private citizens, sought access to information with the atomic test on Amchitka Island in Alaska.

A U.S. court of appeals directed the Federal district judge trying the case to review the documents in camera to determine which, if any, should be released. This seemed an appropriate step and a commendable judgment by the court.

The Supreme Court was asked to review that order and reached a decision in that case which was somewhat tenuous. The Court held that in camera review of material classified for national defense or foreign policy reasons was not permitted because the basis of this decision was the exemption of the act which permits withholding of matters authorized by Executive order to be kept secret in the interest of national defense or foreign policy.

The Supreme Court decided that once the executive had shown that documents were so classified, the judiciary could not intrude. Thus, the mere rubber-stamping of a document as "secret" could forever immunize it from disclosure. All the Court could determine was whether it was so stamped.

The decision before the President would specifically overrule that holding. And it is that provision which seems to cause him the greatest difficulty.

When the Freedom of Information Act amendments were considered by the Senate, I offered a change which would authorize the courts to conduct in camera review of documents classified as "secret" to determine whether the Government is entitled to that secret. I thought it important that the interest of the public should be better served by keeping the information in question secret or making it available to the public.

My amendment was a response to the increased tendency of former administrations to use national security to shield errors in judgment or controversial decisions.

It was a response as well to the mounting evidence, more recently confirmed in taped conversations of the President, that national security reasons were deliberately used to block investigations of White House involvement in Watergate. For that reason, I offered in the Senate for a provision for the Federal judiciary to review determinations to classify secret documents and to decide whether the government's reasons are sufficient to warrant a continued or continued protection.

I cannot understand why we should trust a Federal judge to sort out valid from invalid claims of executive privilege in litigation involving criminal conduct, but not trust him or his colleagues to make the unverified judgments in national security cases connected to the conduct of national defense or foreign policy.

As a practical matter, I cannot imagine that any Federal judge would throw open the gates of the Nation's classified secrets, or that they would substitute their judgment for the head of an agency without carefully weighing all the evidence available and considered by both sides. It is doubtful that there is any Federal judge in the country that would not give weight to an affidavit from the President himself if it carries the merits for classifying a particular document without giving that affidavit a special status.

If we construed the manner in which courts may perform this vital review function, we make the classifiers privileged officials, almost immune from the accountability we bestow on them.

An editorial in the New York Times today refers to reservations the President reportedly has expressed about this legislation on national security grounds.

I believe as the editorial states that the Congress has "made an extraordinary legislative effort to balance the public's right to information with the Government's need to protect its legitimate secrets," and I would strongly urge the President to sign this important bill into law.

If he cannot sign it, he should so state his reasons and offer the Congress an opportunity to accept or reject the veto by a two-thirds vote in both Houses.
FARM-RETAIL PRICE SPREADS FOR RED MEAT

Mr. McCLENDON: Mr. President, the past year has not been a good one for either farmers or consumers. We have seen store prices going up while farm prices were going down. Consumers have been hurt because they could not afford to buy, while farmers have destroyed animals they could not afford to raise.

While there are a number of factors which have led to this paradoxical situation, one of the major ones is the increasing farm-retail price spreads. And the problem is made even worse, I think, because the administration did not take any action to protect the public from this situation.

However, while we are waiting for that report, there are some other sources of information which may prove helpful. A U.S. Department of Agriculture study was prepared in August which partially explains the farm-retail price spreads for pork and choice beef.

This report not only shows how much the price spreads have increased—approaching 50 percent since 1968—but explains in greater detail those factors which have been primarily responsible for this increase. For example, that since 1963, more than 80 percent of the farm-retail spread for beef has occurred in the carcass-retail segment of the trade.

While the report is rather general in most of its data and comments, it does provide a rather useful summary, as well as being somewhat surprising in looking at meat marketing performance in order to reduce the spread.

Therefore, ask unanimous consent to have this report printed in the Record.

There being no objection, the report was ordered to be printed in the Record, as follows:

FARM-RETAIL PRICE SPREADS FOR RED MEAT

(Retirement of a Special Task Force to Earl L. Butz, Secretary of Agriculture. August 1974)

The farm-retail spread, or margin, for beef or pork is the difference between a monthly average composite price per pound of selected cuts and the carcass value of the equivalent quantity of live animals less the value of by-products.

Thus, the farm-retail spread is a measure of the charges for all marketing, processing, and distribution activities that occur between the "farm gate" and "consumer purchase" of the product at retail.

Spreads, or margins, for meat, then, include charges for such activities as transporting animals to packing plants, slaughtering animals and processing products, packaging of product, and shipping meat and products to major consuming areas. Each of these involves expenditures for labor, energy, capital, taxes, and depreciation of fixed assets.

All in all, plus profits earned by firms are included in the price spread or margin reported by USDA. By the way, the price spread will indicate whether the industry is efficient or inefficient, or whether costs for marketing, processing, and distribution are high and not necessary.

WHAT HAS HAPPENED SINCE 1968?

Price spreads for beef and pork have widened substantially in the past 10 years, particularly since 1968 and 1973. The spread for beef hovered between 33 and 30 cents per pound in 1963 and 1968, but jumped sharply and permanently to 45 cents per pound in 1973—a jump of about 50 percent.

Margins for pork have followed similar patterns but with greater year-to-year changes—ranging between 29 and 32 cents per pound in 1963-1973, with widening to 28 cents per pound in 1973—an increase of about one-third.

Several factors contributed to the trend toward wider margins for red meat. Most important have been the sharp increases in costs of labor and other services and supplies required by marketing firms. Hourly earnings of workers in meat packing and processing are three-fourths higher than in 1960. In the food retailing sector, hourly wage earnings are about 80 percent higher in 1973 than in 1960.

Despite labor saving technology and increased labor productivity total labor costs have risen. Prices of containers, packaging, energy and rail freight rates have undergone similar dramatic increases, particularly since 1969.

In a very real sense, marketing margins for meat are the result of the strong inflationary pressures in the American economy since 1960.

In addition, the meat marketing system, like other parts of the food system, now provides additional services such as further processing which requires relatively large inputs of labor. Costs of providing these services plus those for promotion and convenience of store location, operating expenses for winning margins for many foods, including red meat.

BEef SPREAD MOVEMENT

Since 1963 more than 80 percent of the increase in the farm-retail spread for beef has occurred in the carcass-retail segment of the spread (Figure 1). This spread includes costs of slaughter, carcass breaking, local delivery, and retail cutting, packaging and selling.

The other segment, the farm-carcass spread, includes approximately costs of marketing, slaughtering and processing beef animals and transportation to consuming centers. Until the fourth quarter of 1973, when this spread nearly doubled, the farm-carcass spread had been remarkably stable since 1963.

It could be noted that these spreads are not synonymous with packer or retailer margins. The farm-carcass spread includes all services and transportation of animals to packing plants and meat to consuming centers in addition to costs of slaughter at the packing plant. The carcass spread includes wholesaling, local delivery costs, and some fabrication activities as well as costs of meat processing.

Both packers and retailers do some breaking of carcasses but in the USDA price spread alone, no account is made for the carcass-retail spread.

PORK SPREAD MOVEMENT

Changes in the farm-wholesale and wholesale-retail spreads for pork have shown somewhat different patterns from those of beef.

Since packers do much more processing of pork than beef, the farm-wholesale spread for pork is substantially wider and more closely approximates packer margins than does the farm-carcass spread for beef.

The farm-retail spread for pork in 1973 averaged 15.3 cents per pound, about the same as in 1963. Again the major cause of this increase is in the spread centered in the wholesale-retail segment where margins in 1973 averaged 62 percent compared to 52 percent in 1963 and 48 percent above 1972.

PROFITS

Throughout much of the period since 1960, profits as a percentage of stockholder equity ranged between 11 and 13 percent. These were in the major retail food chains as a group. As a percentage of sales, profits ranged between 11 and 13 percent between 1963 and 1973 and they were well below profit rates for other industry groups throughout the 1960-70. Only recently has retailer profits risen to their levels of the 1960's.

Meat packer profits were more unstable but ran somewhat higher relative to sales than those of food retailers.

Overall, profits in the meat packing and food retailing have not been excessive relative to all manufacturing industries in the country.

Meat price margins exploded late in the third quarter of 1973. They rose to record high levels in late winter and early spring. They dropped sharply in April and May and then rebounded to 54 cents in June. Only in the