CONGRESSIONAL RECORD—HOUSE

November 20, 1974

GENERAL LEAVES

Mr. BRADEMAAR, Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to include extraneous matter on the bill, H.R. 14223, just passed.

The SPEAKER. Is there objection to the request of the gentleman from Indiana?

There was no objection.

TRANSMITTING CONSIDERATION OF S. 2149 FROM COMMITTEE ON MERCHANT MARINE AND FISHERIES TO COMMITTEE ON ARMED SERVICES

Mr. SULLIVAN, Mr. Speaker, I ask unanimous consent to have the Committee on Merchant Marine and Fisheries report S. 2149 to the Committee on Armed Services.

S. 2149 would amend title 10 of the United States Code to provide certain benefits to members of the Coast Guard Reserve, and to make other provisions. It is the opinion of the committee that this arrangement is satisfactory to the chairman of the Committee on Armed Services.

The SPEAKER. Is there objection to the request of the gentleman from Missouri?

There was no objection.

FREEDOM OF INFORMATION ACT AMENDMENTS—YET ANOTHER MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER. The unfinished business is the further consideration of the veto message of the President on H.R. 12471, an act to amend section 301 of title 5, United States Code, known as the Freedom of Information Act.

The question is: Shall the House, on reconsideration of the bill, the objections of the President to the contrary notwithstanding?

The Chairman recognizes the gentleman from Pennsylvania (Mr. Moorhead) for 1 hour.

Mr. MOORHEAD of Pennsylvania. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, it is a rare experience for any Member of this distinguished body to lead off the debate in an effort to override a Presidential veto. In my almost 16 years of service here, it has never before been my responsibility to handle a legislative measure in this situation, under the proviso that section 2 of article 1 of the Constitution. It is an awesome task for any Member and one that requires the deepest reflection and most careful consideration of such a course of action.

A little more than 6 weeks ago when I stood here in the Chamber and urged approval of the conference report on H.R. 12471, the Freedom of Information Act amendments, it never occurred to me that a Presidential veto might be forthcoming. However, I explained in detail on that October 7 the changes agreed to by the House-Senate conferences, how they differed from the bill originally passed by the House on March 14 of this year, and the sincere efforts which the conferees of both parties made to accommodate the legitimate needs of the Administration.

But alas, Mr. Speaker, some went awry on the way to the Presidential sign-
The President went on to say in his veto message:

A pertinent question, that where classified documents are requested, the courts could review the classification, but would have to uphold the decision. There is a reasonable basis to support it. In determining the reasonableness of the classification, the courts would have access to the evidence prior to resorting to an in camera examination of the document.

Mr. Speaker, in the procedural handling of such cases under the Freedom of Information Act, this is exactly the way the courts would conduct their proceedings. An agency, in defending an action in Federal court that involves a Government document having classification markings, normally submits an affidavit to the court explaining the basis for the particular classification assigned to it as an Executive Order 11652 and the implementing regulations of the agency involved. The court would then review such affidavit to determine whether use of the classification authority. If there was doubt, or if the affidavit was not sufficiently clear, then the court could request supplementary detail from the agency involved.

It can discuss the affidavit with Government attorneys in camera, or employ other similar means to obtain sufficient information needed to make a judgment. Only if such means cannot provide a clear justification for the classification markings would the court order an in camera inspection of the document itself. If the examination and subsequent discussions of the affidavit from the agency indicate that the classification assigned to the particular document is reasonable and proper under the Executive order and implementing regulations, the court would clearly rule for the Government and order the requested document withheld from the plaintiff. But if the examination and subsequent discussions of the affidavit from the agency could not resolve the issue, the court would order the production of the document and examine it in camera to determine if the classification markings were properly authorized.

Such authority for in camera review is authorized in H.R. 12471, and properly so, to safeguard against arbitrary, capricious, and myopic use of the awesome power of the classification stam by the Government bureaucracy. Absence of the classification stamp are well known. As former President Nixon said in issuing the present classification and declasification Executive order in March 1973:

The many abuses of the security system can no longer be tolerated. Unfortunately, the system of classification which has evolved in the United States has failed to prevent the threat to the democratic society, allowing too many papers to be classified for too long a time. The concern of the Justice Department, which has classification authority, has proved unworkable, and classification has frequently served to cover up a lack of adequate resources to prevent embarrassment to officials and administrations.

Former Defense Secretary Melvin Laird also said in a 1970 speech:

Let me emphasize my convictions that the American people have not even more than has been available in the past about matters which affect their safety and security, but now too much classification in this country.

Mr. Speaker, even if a district court ordered the release of a classified document in dispute, after following all of the procedures, the judge must include in camera review of the document itself, such decision may—of course—he be appealed by the Government to the circuit court of appeals, and, if necessary, to the Supreme Court. I find it totally unrealistic to assume—as apparently the President's legal advisors have assumed—that the Federal judiciary system is somehow not to be trusted to act in the public interest to safeguard truly legitimate national defense or foreign policy secrets of our Government.

Similarly, rigorous legal arguments are made later in the veto message with respect to investigatory law enforcement agencies and time limits placed on the Freedom of Information Act for agency responses. For example, the veto message states:

The process that more feasible criteria govern the requests for particularly lengthy investigative records to mitigate the burden which may be created within an agency in order to not to dilute the primary responsibilities of these law enforcement activities.

Mr. Speaker, no one wants to burden law enforcement agencies or to take their attention away from their vital job of fighting the growing menace of crime in America. The language of section 30b of H.R. 12471 in no way places an undue burden on such agencies. The conference committees specifically took into consideration the potential problem that might be created within an agency if it received a request for the type of "particularly lengthy" records mentioned in the veto message. We wrote the present law in a provision that any reason time could be obtained by an agency in any event a voluminous amount of separate and distinct records which might be requested in a single the President's lawyers did not notice this part of the bill before drafting the veto message.

Mr. Speaker, we also include language requested by the President in his August 20 letter to the conference committees to authorize the courts to order a Federal agency to respond to a request under the Freedom of Information Act if the agency is "exercising due diligence in responding to the request," Here again the veto message ignores specific language already included in the bill.

Mr. Speaker, as I have attempted to explain in detail during my remarks, this veto is without merit and represents a shocking lack of understanding of the workings of the present law, court procedures, and the clear language that makes it easy for us to include in this bill with the major objections raised against H.R. 12471.

As strongly as I know how, Mr. Speaker, I urge the Members of this House to join in voting "aye" to override this ill-advised veto of the Freedom of
Information Act amendments contained in H.R. 12471.
Let our voices here today make clear to the doubting citizens of America that Congress is fully committed to the principle of "open government." By our votes to override this veto we can put the needed teeth in the freedom of information laws. Each of us, as a representative of the people, has a right to know what the government is doing. The open government movement has not been defeated simply because the President vetoed the bill. The veto is a vote of no confidence. The people in many states have a right to know. The Open Government movement is today more determined and more confident than ever!
Mr. Ford's veto of H.R. 12471 is in direct contradiction of his approval of an "open administration." Further, his demands for more amendments but unwillingness to endorse the FOI amendments raise additional questions about the credibility of his openness pledge. The courts have agreed. As we move halfway to meet administration objections to the original FOI changes considered on Capitol Hill, the Ford administration committee finally released a modified FOI bill that emerged as a genuine compromise between congressional representatives and Justice Department's original draft.
Mr. Ford got four out of the five changes he recommended to the committee. Yet not one of them affected the bill but he added a new demand to his original proposals. In his veto message, President Ford contended for the first time that lengthy investigations and court proceedings might lead to the discovery of state secrets. He insisted his earlier demand that Congress not give the courts as much power as the bill provides for should not be witheld for reasons of national security.
Mr. Ford's veto also precluded other improvements. Clear from the setting of reasonable time limits for federal agencies to answer requests for public records. The Ford veto for the last year's annual reports on compliance of the law.
The amendments to strengthen the FOI provisions in H.R. 12471. Mr. Ford vetoed the house with only two dissenting votes and there was no opposition in the Senate.
Mr. Ford will not follow through on his open administration pledge, then Congress ought do it for him by overriding his veto.

From the Washington Post, Nov. 20, 1974
Final Flap: Uncertainties
Just before the election race, President Ford used his power to veto and sent back to the Congress a piece of very important legislation, the 1976 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 practice 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 the various agencies 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 veto threats, the amendments was ready for presidential signature. They shorted 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 citizen groups have criticized that action by the President and called for him to override the veto. Today in the House and tomorrow in the Senate, those votes are scheduled to take place. We are taking 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. Furthermore, various social action organizations that hardly merit either the label or the attention they were given by the Nixon White House has been revealed.
In the same vein, the Justice Department released a report earlier this week on the operations of a counterintelligence operation of the FBI. Much of this information about using 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 Sachs felt compelled, on the basis of what the Justice Department had done, Mr. Sarboe found aspects of the program completely unconstitutional. Clarence M. Kelley actually defended the practices of his predecessor, J. Edgar Hoover. The Justice Department's position is that this country has a strong Freedom of Information law that will make it possible for Congress to do its annual reports on compliance of the law.

From the Jackson (Mich.) Citizen Patriot
Jon Needs FINISHING

Issue: Should Congress override President Ford veto of bill amending the Freedom of Information Act
Almost lost in the campaign rhetoric was the President's veto of a bill that had taken three years of cooperative work between congressmen, public groups, and the press.
It would have made the federal bureaucracy more responsible for classifying documents and refusing to open them to public inspection.
In its final form, the bill, amending the 1966 Freedom of Information Act, passed by the Senate by voice vote because of the minute opposition, and the House voted 349-2 in favor of it.
Back in 1966, Congress established the policy of the public's right to know what and how well government was working. The present bill was opposed by several federal agencies, and as a result, President Ford proposed five modifications. Congress refused to accept the modifications because President Ford didn't support the bill, but he vetoed the legislation because he didn't trust the bill.
Then President Ford, who launched his administration with a pledge of openness in government, vetoed the bill because he didn't trust the legislation. The bill does not jeopardize national se-
curity, safeguards having been built into it. It does jeopardize millions of dollars, which are being spent in their own private vacuums.

As to the President's amendment to the 1986 Freedom of Information Act that would allow the White House to determine restrictions on classifications.

As written, the bill would fill a chink in the 1966 law that says that executive branch agencies must establish regulations specifically directed by the executive branch. It also provides specific time limits on both parties so that in the unlikely event a dispute should arise, the bill would establish a framework for resolving the dispute.

Ford's position is that the amendments to the 1966 Freedom of Information Act that would allow the White House to determine restrictions on classifications would severely undermine the 1966 law. Therefore, the time limits are unnecessary and would be overridden by the provisions.

In 1966, when both houses of Congress opened the Government's last major piece of legislation, the Freedom of Information Act, virtually every department in the executive branch urged a veto. Eventually, the act was signed into law. Somehow, government survived.

President Ford would have done well last Thursday when he vetoed the secrecy bill. As an example, instead of vetoing, he issued an immensely important, widely supported and overdue bill to extend the 1966 Freedom of Information Act by the Senate and House as an early order of business when they reconvene Nov. 18. Unlike the bill vetoed at most of the past four years, the year of the budget, instead of arguing that the budget was necessary, Fiends against arbitrary secrecy and government have been making a sustained effort since the 1966 law was signed.

The principal opponents have been the often-identified, nameless functionaries of government who are reluctant to find themselves either too troublesome or too dangerous for the people of the United States to know. Moreover, any bill that has been defeated on their behalf has been defeated by the Senate and House with unanimous voice vote in the Senate.

Wasserman and all his size, each in the Senate and House, obtained the same result. The House and by unanimous voice vote in the Senate.

If the same Mr. Ford's veto, urged by every department of the executive branch except the Civil Service Commission and—somewhat astonishingly—the Department of Defense.

The President's veto message focused mainly on the bills assignment to the judiciary the authority to rule on the appropriateness of secrecy classifications erected by executive agencies and on enforcement provisions—including time limits on bureaucratic stalling and other mild penalties for violating laws.

The same objections were raised by Mr. Ford in August. Serious attention was given then, but the President's reservations were made to avoid any possibility of success.

We are convinced that the only real danger posed by the legislation is that the anonymous and arbitrary excesses of power often used by government servants to evade accountability. Mr. Ford's invocations of unconstitutionality and national security—especially in the aftermath of the Watergate scandal—only serve to enshrine their ideology: they are offensive in their insensitivity to public disloyalty.

With the legislation in adjournment, its members are at home, pursuing votes in an election year made tumultuous by the very measures the report by Congress of secrecy and accountability the Freedom of Information bill sought to help remedy.

These legislators' constituents—those Americans who do not want the public prying into their affairs. Other amendments in addition to the national defense item require agencies to respond more promptly to complaints filed under the 1966 Freedom of Information Act and a provision making it easier for the public to get answers to requests for documents.

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