

CLARIFYING AND PROTECTING THE RIGHT OF THE PUBLIC TO INFORMATION

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State of the Union and ordered to be printed

Mr. DAWSON, from the Committee on Government Operations,
submitted the following

REPORT

[To accompany S. 1160]

The Committee on Government Operations, to whom was referred the bill (S. 1160) to amend section 3 of the Administrative Procedure Act, chapter 324, of the act of June 11, 1946 (60 Stat. 238), to clarify and protect the right of the public to information, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

I. PURPOSE

Section 3 of the Administrative Procedure Act (5 U.S.C. 1002) requires every executive agency to publish or make available to the public its methods of operation, public procedures, rules, policies, and precedents, and to make available other "matters of official record" to any person who is properly and directly concerned therewith. These requirements are subject to several broad exceptions discussed below. The present section 3 is not a general public records law in that it does not afford to the public at large access to official records generally.

S. 1160 would revise the section to provide a true Federal public records statute by requiring the availability, to any member of the public, of all of the executive branch records described in its requirements, except those involving matters which are within nine stated exemptions. It makes the following major changes:

1. It eliminates the "properly and directly concerned" test of who shall have access to public records, stating that the great majority of records shall be available to "any person." So that there would be no undue burden on the operations of Government agencies, reason-

able access regulations may be established and fees for record searches charged as is required by present law.¹

2. It sets up workable standards for the categories of records which may be exempt from public disclosure, replacing the vague phrases "good cause found," "in the public interest," and "internal management" with specific definitions of information which may be withheld. Some of the specific categories cover information necessary to protect the national security; others cover material such as the Federal Bureau of Investigation files which are not now protected by law.²

3. It gives an aggrieved citizen a remedy by permitting an appeal to a U.S. district court. The court review procedure would be expected to persuade against the initial improper withholding and would not add substantially to crowded court dockets.³

II. BACKGROUND

The broad outlines for legislative action to guarantee public access to Government information were laid out by Dr. Harold L. Cross in 1953. In that year he published, for the American Society of Newspaper Editors, the first comprehensive study of growing restrictions on the people's right to know the facts of government. Newspapermen, legislators, and other Government officials were concerned about the mushrooming growth of Government secrecy, but as James S. Pope, who was chairman of the Freedom of Information Committee of ASNE, explained in the foreword of the Cross book, "The People's Right To Know":

* * * we had only the foggiest idea of whence sprang the blossoming Washington legend that agency and department heads enjoyed a sort of personal ownership of news about their units. We knew it was all wrong, but we didn't know how to start the battle for reformation.

Basic to the work of Dr. Cross was the—

conviction that inherent in the right to speak and the right to print was the right to know. The right to speak and the right to print, without the right to know, are pretty empty
* * *⁴

Dr. Cross outlined three areas where, through legislative inaction, the weed of improper secrecy had been permitted to blossom and was choking out the basic right to know: the "housekeeping" statute which gives Government officials general authority to operate their agencies, the "executive privilege" concept which affects legislative access to executive branch information, and section 3 of the Administrative Procedure Act which affects public access to the rules and regulations of Government action.

In 1958 Congress corrected abuse of the Government's 180-year-old "housekeeping" statute by enacting a bill introduced in the House by Congressman John E. Moss and in the Senate by Senator Thomas E. Hennings. The Moss-Hennings bill stated that provisions of the

¹ Hearings, pp. 61 and 67; see also 5 U.S.C. 140.

² Hearings, pp. 15, 20, 27, and 39.

³ Hearings, pp. 107 and 109.

⁴ Hearings, Foreign Operations and Government Information Subcommittee, on a proposed Federal public records law, Mar. 30, 31, Apr. 1, 2, and 5, 1965, p. 26, cited hereafter as "hearings."

"housekeeping" statute (5 U.S.C. 22) which permitted department heads to regulate the storage and use of Government records did not permit them to withhold those records from the public.

The concept that Government officials far down the administrative line from the President could use a claim of "executive privilege" to withhold information from the Congress was narrowed in 1962 when President Kennedy informed Congress that he, and he alone, would invoke it. This limitation on the use of the "executive privilege" claim to withhold information from Congress was affirmed by President Johnson in a letter to Congressman Moss on April 2, 1965.⁵

While there have been substantial improvements in two of the areas of excessive Government secrecy, nothing has been done to correct abuses in the third area. In fact, section 3 of the Administrative Procedure Act has become the major statutory excuse for withholding Government records from public view.

THE "PUBLIC INFORMATION" SECTION OF THE ADMINISTRATIVE PROCEDURE ACT

The Administrative Procedure Act, which was adopted in 1946 to bring some order out of the growing chaos of Government regulation, set uniform standards for the thousands of Government administrative actions affecting the public; it restated the law of judicial review permitting the public to appeal to the courts about wrongful administrative actions; it provided for public participation in an agency's rulemaking activities. But most important it required "agencies to keep the public currently informed of their organization, procedures, and rules."⁶ The intent of the public information section of the Administrative Procedure Act (sec. 3) was set forth clearly by the Judiciary Committee, in reporting the measure to the Senate. The report declares that the public information provisions—

are in many ways among the most important, far-reaching, and useful provisions * * *. The section has been drawn upon the theory that administrative operations and procedures are public property which the general public, rather than a few specialists or lobbyists, is entitled to know or have ready means of knowing with definiteness and assurance.⁷

The act was signed in June 1946, and on July 15, 1946, the Department of Justice distributed to all agencies a 12-page memorandum interpreting section 3, which was to become effective on September 11, 1946. The memorandum, which together with similar memorandums interpreting the other sections of the act was later made available in the Attorney General's Manual, noted that Congress had left up to each agency the decision on what information about the agency's actions was to be classed as "official records."⁸

The Administrative Procedure Act had been in operation less than 10 years when a Hoover Commission task force recommended minor changes in the public information section. S. 2504 (Wiley) and S. 2541 (McCarthy) were introduced in the 84th Congress to carry out the minimal task force recommendations, but the bills died without even a hearing. In the 85th Congress, the first major revision of the public

information provisions was introduced simultaneously in the House by Congressman Moss (H.R. 7174) and in the Senate by Senator Hennings (S. 2148). The legislation was based on a detailed study by Jacob Scher, Northwestern University expert on press law, who was serving as special counsel to the House Government Information Subcommittee. There was no action in either the House or Senate on the Moss and Hennings bills, and modified versions were introduced year after year with no final action. In the 88th Congress the Senate passed S. 1666 too late in the session for House action. In the 89th Congress the Senate passed S. 1160 sponsored by 22 Members of the Senate, and the Foreign Operations and Government Information Subcommittee held extensive hearings on similar legislation—H.R. 5012 and 23 comparable House bills.

III. THE NEED FOR LEGISLATION

Section 3 of the Administrative Procedure Act (5 U.S.C. 1002), though titled "Public Information" and clearly intended for that purpose, has been used as an authority for withholding, rather than disclosing, information. Such a 180° turn was easy to accomplish given the broad language of 5 U.S.C. 1002. The law, in its entirety, states:

PUBLIC INFORMATION

SEC. 3. Except to the extent that there is involved (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating solely to the internal management of an agency—

(a) RULES.—Every agency shall separately state and currently publish in the Federal Register (1) descriptions of its central and field organization including delegations by the agency of final authority and the established places at which, and methods whereby, the public may secure information or make submittals or requests; (2) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal or informal procedures available as well as forms and instructions as to the scope and contents of all papers, reports, or examinations; and (3) substantive rules adopted as authorized by law and statements of general policy or interpretations formulated and adopted by the agency for the guidance of the public, but not rules addressed to and served upon named persons in accordance with law. No person shall in any manner be required to resort to organization or procedure not so published.

(b) OPINIONS AND ORDERS.—Every agency shall publish or, in accordance with published rule, make available to public inspection all final opinions or orders in the adjudication of cases (except those required for good cause to be held confidential and not cited as precedents) and all rules.

(c) PUBLIC RECORDS.—Save as otherwise required by statute, matters of official record shall in accordance with published rule be made available to persons properly and directly concerned except information held confidential for good cause found.

⁵ Hearings, p. 123.

⁶ Attorney General's Manual on the Administrative Procedure Act, prepared by the Department of Justice, 1947, p. 9; cited hereafter as "Attorney General's Manual."

⁷ H. RPT. 753, 79th Cong., 1st sess., p. 103.

⁸ Attorney General's Manual, p. 24.

In a sense, "public information" is a misnomer for 5 U.S.C. 1002, since the section permits withholding of Federal agency records if secrecy is required "in the public interest" or if the records relate "solely to the internal management of an agency." Government information also may be held confidential "for good cause found." Even if no good cause can be found for secrecy, the records will be made available only to "persons properly and directly concerned." Neither in the Administrative Procedure Act nor its legislative history are these broad phrases defined, nor is there a recognition of the basic right of any person—not just those special classes "properly and directly concerned"—to gain access to the records of official Government actions. Above all, there is no remedy available to a citizen who has been wrongfully denied access to the Government's public records. The present statute, therefore, is not in any realistic sense a public information statute.

ABUSE OF THE "PUBLIC INFORMATION" SECTION

Improper denials occur again and again. For more than 10 years, through the administrations of both political parties, case after case of improper withholding based upon 5 U.S.C. 1002 has been documented. The Administrative Procedure Act provides no adequate remedy to members of the public to force disclosures in such cases.

Earlier this year the Foreign Operations and Government Information Subcommittee uncovered a serious violation of subsection (a) of 5 U.S.C. 1002 which requires every Government agency to publish its rules and a description of its organization and method of operation. In spite of repeated demands, this clear legal requirement has been ignored by the Board of Review on Loss of Nationality in the Department of State, which has authority over questions of citizenship.

In 1962 the National Science Foundation decided it would not be "in the public interest" to disclose cost estimates submitted by unsuccessful contractors in connection with a multimillion-dollar deep sea study. It appeared that the firm which had won the lucrative contract had not submitted the lowest bid. It took White House intervention to reverse the agency's decision that it had authority for this secrecy "in the public interest."⁹

Matters which relate solely to "internal management" and thus can be withheld under the provisions of 5 U.S.C. 1002 range from the important to the insignificant. They range from a proposed spending program, still being worked out in the agency for future presentation to the Congress, to a routine telephone book. In 1961, for example, the Secretary of the Navy ruled that "telephone directories fall in the category of information relating to the internal management of the Navy," and he cited 5 U.S.C. 1002 as his authority for this ruling.¹⁰ On the other hand, in some instances the premature disclosure of agency plans that are undergoing development and are likely to be revised before they are presented, particularly plans relating to expenditures, could have adverse effects upon both public and private interests. Indeed, there may be plans which, even though finalized, cannot be made freely available in advance of the effective date without damage to such interests. There may be legitimate reasons for

nondisclosure, and S. 1160 is designed to permit nondisclosure in such cases.

The statutory requirement that information about routine administrative actions need be given only to "persons properly and directly concerned" has been relied upon almost daily to withhold Government information from the public. A most striking example is the almost automatic refusal to disclose the names and salaries of Federal employees. Shortly after World War II the western office of a Federal regulatory agency refused to make available the names and salaries of its administrative and supervisory employees. In 1959 the Postmaster General ruled that the public was not "properly and directly concerned" in knowing the names and salaries of postal employees. This ruling has been reiterated by every Postmaster General in every administration since and was only overturned recently by a Civil Service Commission ruling that "the names, position titles, grades, salaries, and duty stations of Federal employees are public information."¹¹

If none of the other restrictive phrases of 5 U.S.C. 1002 applies to the official Government record which an agency wishes to keep confidential, it can be hidden behind the "good cause found" shield. Historically, Government agencies whose mistakes cannot bear public scrutiny have found "good cause" for secrecy. A recurring example is the refusal by regulatory boards and commissions which are composed of more than one member to make public their votes on issues or to publicize the views of dissenting members. According to the latest subcommittee survey, six regulatory agencies do not publicize dissenting views. And the Board of Engineers for Rivers and Harbors, which rules on billions of dollars' worth of Federal construction projects, used the "good cause found" authority to close its meetings to the press and to refuse to divulge the votes of its members on controversial issues.¹²

Thus, even though 5 U.S.C. 1002 is titled a "public information" section, the requirements for publicity are so hedged with restrictions that it has been cited as the basic statutory authority for 24 separate terms—in addition to "Top Secret," "Secret," and "Confidential" used by Executive order only on national defense matters—which Federal agencies have devised to stamp on administrative information they want to keep from public view. The 24 restrictive phrases range from the often-used "Official Use Only" through the simple "Non-public" and more complicated "Individual Company Data" to the long and confusing "Limitation on Availability of Equipment Files for Public Reference."

It is vital to our way of life to reach a workable balance between the right of the public to know and the need of the Government to keep information in confidence to the extent necessary without permitting indiscriminate secrecy. The right of the individual to be able to find out how his Government is operating can be just as important to him as his right to privacy and his right to confide in his Government. This bill strikes a balance considering all these interests.

⁹ H. Rept. 918, 85th Cong., pp. 89-90.

¹⁰ H. Rept. 1237, 87th Cong., pp. 77-82.

¹¹ H. Rept. 2084, 84th Cong., pp. 128-133; H. Rept. 818, 87th Cong., pp. 106-109; Congressional Record, Mar. 21, 1960, pp. A1508-1509.

¹² H. Rept. 2578, 85th Cong., pp. 42-53; H. Rept. 1137, 86th Cong., pp. 71-74.

IV. DETAILED DESCRIPTION

Subsection (a).—A number of the minor changes which subsection (a) of S. 1160 would make in the present law clarify the fact that the Federal Register is a publication in which the public can find the details of the administrative operations of Federal agencies. They would be able to find out where and by whom decisions are made in each Federal agency and how to make submittals or requests. These administrative details are required to be published in the Federal Register by the present law, but it is unclear exactly what type of material must be published.

Subsection (a) also includes a provision to help reduce the bulk of the Federal Register by making it unnecessary to publish material "which is reasonably available" if that material has been incorporated in the Federal Register by reference. Presumably, the reference would indicate where and how the material may be obtained. Permission to incorporate material in the Federal Register by reference would have to be granted by the Director of the Federal Register, instead of permitting each agency head to decide what should be published.

An added incentive for agencies to publish the necessary details about their official activities in the Federal Register is the provision that no person shall be "adversely affected" by material required to be published—or incorporated by reference—in the Federal Register but not so published. This tightens the present law which states that no person shall be required to resort to "organization and procedure" not published in the Federal Register.

Subsection (b).—The present subsection (b) permits an agency's orders and opinions to be withheld from the public if the material is "required for good cause found to be held confidential." Subsection (b) of S. 1160 deletes this general, undefined authority for secrecy. Instead, the bill lists in a later subsection the specific categories of information which may be exempted from disclosure.

In addition to the orders and opinions required to be made public by the present law, subsection (b) of S. 1160 would require agencies to make available statements of policy, interpretations, staff manuals, and instructions that affect any member of the public. This material is the end product of Federal administration. It has the force and effect of law in most cases, yet under the present statute these Federal agency decisions have been kept secret from the members of the public affected by the decisions.

As the Federal Government has extended its activities to solve the Nation's expanding problems—and particularly in the 20 years since the Administrative Procedure Act was established—the bureaucracy has developed its own form of case law. This law is embodied in thousands of orders, opinions, statements, and instructions issued by hundreds of agencies. This is the material which would be made available under subsection (b) of S. 1160. However, under S. 1160 an agency may not be required to make available for public inspection and copying any advisory interpretation on a specific set of facts which is requested by and addressed to a particular person, provided that such interpretation is not cited or relied upon by any officer or employee of the agency as a precedent in the disposition of other cases. Furthermore, an agency may not be required to make available those portions of its staff manuals and instructions which set forth criteria or guidelines for the staff in auditing or inspection procedures, or in

the selection or handling of cases, such as operational tactics, allowable tolerances, or criteria for defense, prosecution, or settlement of cases.

Subsection (b) solves the conflict between the requirement for public access to records of agency actions and the need to protect individual privacy. It permits an agency to delete personal identifications from its public records "to prevent a clearly unwarranted invasion of personal privacy." The public has a need to know, for example, the details of an agency opinion or statement of policy on an income tax matter, but there is no need to identify the individuals involved in a tax matter if the identification has no bearing or effect on the general public. Subsection (b) of S. 1160 would prevent the privacy deletion from being used as a general excuse for secrecy by requiring that the justification for each deletion be explained in writing.

Subsection (b) would help bring order out of the confusion of agency orders, opinions, policy statements, interpretations, manuals, and instructions by requiring each agency to maintain for public inspection an index of all the documents having precedential significance which would be made available or published under the law. The indexing requirement will prevent a citizen from losing a controversy with an agency because of some obscure or hidden order or opinion which the agency knows about but which has been unavailable to the citizen simply because he had no way to discover it. However, considerations of time and expense caused this indexing requirement to be made prospective in application only.

Many agencies—including the Interstate Commerce Commission which is the oldest Federal regulatory agency—already have adequate indexing programs in operation. As an incentive to establish an effective indexing system, subsection (b) of S. 1160 includes a provision that no agency action may be relied upon, used, or cited as a precedent against a private party unless it is indexed or unless the private party has adequate notice of the terms of the agency order.

Subsection (b) requires that Federal agency records which are available for public inspection also must be available for copying, since the right to inspect records is of little value without the right to copy them for future reference. Presumably the copying process would be without expense to the Government since the law (5 U.S.C. 140) already directs Federal agencies to charge a fee for any direct or indirect services such as providing reports and documents.

Subsection (b) also requires concurring and dissenting opinions to be made available for public inspection. The present law, requiring most final opinions and orders to be made public, implies that dissents and concurrences need not be disclosed. As a the result of a Government Information Subcommittee investigation a number of years ago, two major regulatory agencies agreed to make public the dissenting opinions of their members, but a recent survey indicated that five agencies—including the Federal Deposit Insurance Corporation and the Renegotiation Board—do not make public the minority views of their members.

Subsection (c).—In place of the negative approach of the present law (5 U.S.C. 1002) which permits only persons properly and directly concerned to have access to official records if the records are not held confidential for good cause found, subsection (c) of S. 1160 establishes the basic principle of a public records law by making the records available to any person.

The persons requesting records must provide a reasonable description enabling Government employees to locate the requested material, but the identification requirement must not be used as a method for withholding. Reasonable access rules can be adopted stating the time and place records shall be available—presumably during regular working hours in the location where the records are stored or used—and stating the records search or copying fees which may be charged pursuant to 5 U.S.C. 140.

Subsection (c) contains a specific remedy for any improper withholding of agency records by granting the U.S. district courts jurisdiction to order the production of agency records improperly withheld. If a request for information is denied by an agency subordinate the person making the request is entitled to prompt review by the head of the agency. An aggrieved person is given the right to file an action in the district where he resides or has his principal place of business, or where the agency records are situated.

The proceedings are to be de novo so that the court can consider the propriety of the withholding instead of being restricted to judicial sanctioning of agency discretion. The Court will have authority whenever it considers such action equitable and appropriate to enjoin the agency from withholding its records and to order the production of agency records improperly withheld. The burden of proof is placed upon the agency which is the only party able to justify the withholding. A private citizen cannot be asked to prove that an agency has withheld information improperly because he will not know the reasons for the agency action.

The court is authorized to expedite actions under subsection (c) "in every way," and the court review procedure would be expected to serve as an influence against the initial wrongful withholding instead of adding substantially to crowded court dockets.

Subsection (d).—The subsection requires that a record be kept of all final votes of multiheaded agencies in any regulatory or adjudicative proceeding and such record shall be open to public inspection. Practices of the many agencies vary in this regard. The subsection would require public access to the records of official votes unless the information is withheld pursuant to the exemptions spelled out in the following subsection.

Subsection (e).—All of the preceding subsections of S. 1160—requirements for publication of procedural matters and for disclosure of operating procedures, provisions for court review, and for public access to votes—are subject to the exemptions from disclosure specified in subsection (e). They are:

1. Matters specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy: The language both limits the present vague phrase, "in the public interest," and gives the area of necessary secrecy a more precise definition. The permission to withhold Government records "in the public interest" is undefinable. In fact, the Department of Justice left it up to each agency to determine what would be withheld under the blanket term "public interest."¹³ No Government employee at any level believes that the "public interest" would be served by disclosure of his failures or wrongdoings, but citizens both in and out of Government can agree to restrictions on categories of information which the

President has determined must be kept secret to protect the national defense or to advance foreign policy, such as matters classified pursuant to Executive Order 10501.

2. Matters related solely to the internal personnel rules and practices of any agency: Operating rules, guidelines, and manuals of procedure for Government investigators or examiners would be exempt from disclosure, but this exemption would not cover all "matters of internal management" such as employee relations and working conditions and routine administrative procedures which are withheld under the present law.¹⁴

3. Matters which are specifically exempted from disclosure by other statutes: There are nearly 100 statutes or parts of statutes which restrict public access to specific Government records. These would not be modified by the public records provisions of S. 1160.

4. Trade secrets and commercial or financial information obtained from any person and privileged or confidential: This exemption would assure the confidentiality of information obtained by the Government through questionnaires or through material submitted and disclosures made in procedures such as the mediation of labor-management controversies.¹⁵ It exempts such material if it would not customarily be made public by the person from whom it was obtained by the Government. The exemption would include business sales statistics, inventories, customer lists, scientific or manufacturing processes or developments, and negotiation positions or requirements in the case of labor-management mediations. It would include information customarily subject to the doctor-patient, lawyer-client, or lender-borrower privileges such as technical or financial data submitted by an applicant to a Government lending or loan guarantee agency. It would also include information which is given to an agency in confidence, since a citizen must be able to confide in his Government. Moreover, where the Government has obligated itself in good faith not to disclose documents or information which it receives, it should be able to honor such obligations.

5. Inter-agency or intra-agency memorandums or letters which would not be available by law to a private party in litigation with the agency: Agency witnesses argued that a full and frank exchange of opinions would be impossible if all internal communications were made public. They contended, and with merit, that advice from staff assistants and the exchange of ideas among agency personnel would not be completely frank if they were forced to "operate in a fishbowl." Moreover, a Government agency cannot always operate effectively if it is required to disclose documents or information which it has received or generated before it completes the process of awarding a contract or issuing an order, decision or regulation. This clause is intended to exempt from disclosure this and other information and records wherever necessary without, at the same time, permitting indiscriminate administrative secrecy. S. 1160 exempts from disclosure material "which would not be available by law to a private party in litigation with the agency." Thus, any internal memorandums which would routinely be disclosed to a private party through the discovery process in litigation with the agency would be available to the general public.

¹⁴ Hearings, pp. 29 and 30.

¹⁵ Hearings, pp. 45 and 46.

¹³ Attorney General's Manual, p. 18.

6. Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy: Such agencies as the Veterans' Administration, Department of Health, Education, and Welfare, Selective Service, and Bureau of Prisons have great quantities of files containing intimate details about millions of citizens. Confidentiality of these records has been maintained by agency regulation but without statutory authority.¹⁶ A general exemption for the category of information is much more practical than separate statutes protecting each type of personal record. The limitation of a "clearly unwarranted invasion of personal privacy" provides a proper balance between the protection of an individual's right of privacy and the preservation of the public's right to Government information by excluding those kinds of files the disclosure of which might harm the individual. The exemption is also intended to cover detailed Government records on an individual which can be identified as applying to that individual and not the facts concerning the award of a pension or benefit or the compilation of unidentified statistical information from personal records.

7. Investigatory files compiled for law enforcement purposes except to the extent available by law to a private party: This exemption covers investigatory files related to enforcement of all kinds of laws, labor and securities laws as well as criminal laws. This would include files prepared in connection with related Government litigation and adjudicative proceedings. S. 1160 is not intended to give a private party indirectly any earlier or greater access to investigatory files than he would have directly in such litigation or proceedings.

8. Matters contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions: This exemption is designed to insure the security and integrity of financial institutions, for the sensitive details collected by Government agencies which regulate these institutions could, if indiscriminately disclosed, cause great harm.

9. Geological and geophysical information and data (including maps) concerning wells: This category was added after witnesses testified that geological maps based on explorations by private oil companies were not covered by the "trade secrets" provisions of present laws. Details of oil and gas findings must be filed with Federal agencies by companies which want to lease Government-owned land. Current regulations of the Bureau of Land Management prohibit disclosure of these details only if the disclosure "would be prejudicial to the interests of the Government" (43 CFR, pt. 2). Witnesses contended that disclosure of the seismic reports and other exploratory findings of oil companies would give speculators an unfair advantage over the companies which spent millions of dollars in exploration.

Subsection (f).—The purpose of this subsection is to make clear beyond doubt that all the materials of Government are to be available to the public unless specifically exempt from disclosure by the provisions of subsection (e) or limitations spelled out in earlier subsections. And subsection (f) restates the fact that a law controlling public access to Government information has absolutely no effect upon congressional access to information. Members of the Congress

¹⁶ Hearings, pp. 13, 20, 27, and 39.

have all of the rights of access guaranteed to "any person" by S. 1160, and the Congress has additional rights of access to all Government information which it deems necessary to carry out its functions.¹⁷

Subsection (g).—This subsection defines "private party" as any party other than an agency. The term is not defined elsewhere in the Administrative Procedure Act to be amended by S. 1160.

Subsection (h).—A delay of 1 year in the effective date of the Federal public records law is designed to give agencies ample time to conform their practices to the new law.

V. CONCLUSION

A democratic society requires an informed, intelligent electorate, and the intelligence of the electorate varies as the quantity and quality of its information varies. A danger signal to our democratic society in the United States is the fact that such a political truism needs repeating. And repeated it is, in textbooks and classrooms, in newspapers and broadcasts.

The repetition is necessary because the ideals of our democratic society have outpaced the machinery which makes that society work. The needs of the electorate have outpaced the laws which guarantee public access to the facts in Government. In the time it takes for one generation to grow up and prepare to join the councils of Government—from 1946 to 1966—the law which was designed to provide public information about Government activities has become the Government's major shield of secrecy.

S. 1160 will correct this situation. It provides the necessary machinery to assure the availability of Government information necessary to an informed electorate.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 3 OF THE ADMINISTRATIVE PROCEDURE ACT

(50 STAT. 238)

PUBLIC INFORMATION

SEC. 3. [Except to the extent that there is involved (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating solely to the internal management of an agency—] *Every agency shall make available to the public the following information:*

(a) [RULES] PUBLICATION IN THE FEDERAL REGISTER.—Every agency shall separately state and currently publish in the Federal Register for the guidance of the public [(1)] (A) descriptions of its central and field organization [including delegations by the Agency of final authority] and the established places at which, *the officers from whom, and the methods whereby, the public may secure information.*

¹⁷ Hearings, p. 23.

[or], make submittals or requests, or obtain decisions; [(2)] (B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal [or] and informal procedures available [as well as forms and instructions as to the scope and contents of all papers, reports, or examinations]; (C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations; [and (3)] (D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency [for the guidance of the public, but not rules addressed to and served upon named persons in accordance with law]; and (E) every amendment, revision, or repeal of the foregoing. [No] Except to the extent that a person has actual and timely notice of the terms thereof, no person shall in any manner be required to resort to [organization or procedure], or be adversely affected by any matter required to be published in the Federal Register and not so published. For purposes of this subsection, matter which is reasonably available to the class of persons affected thereby shall be deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(b) AGENCY OPINIONS AND ORDERS.—Every agency shall [publish or], in accordance with published [rule] rules, make available [to] for public inspection and copying (A) all final opinions (including concurring and dissenting opinions) and all [or] orders made in the adjudication of cases [(except those required for good cause to be held confidential and not cited as precedents) and all rules], (B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register, and (C) administrative staff manuals and instructions to staff that affect any member of the public, unless such materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction: Provided, That in every case the justification for the deletion must be fully explained in writing. Every agency also shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter which is issued, adopted, or promulgated after the effective date of this Act and which is required by this subsection to be made available or published. No final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects any member of the public may be relied upon, used or cited as precedent by an agency against any private party unless it has been indexed and either made available or published as provided by this subsection or unless that private party shall have actual and timely notice of the terms thereof.

(c) PUBLIC RECORDS.—Save as otherwise required by statute, matters of official record shall in accordance with published rule be made available to persons properly and directly concerned except information held confidential for good cause found. AGENCY RECORDS.—Except with respect to the records made available pursuant to subsections (a) and (b), every agency shall, upon request for identifiable records made in accordance with published rules stating the time, place, fees to the extent authorized by statute and procedure to be followed, make such records available to any person. Upon complaint, the district court

of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated shall have jurisdiction to enjoin the agency from the withholding of agency records and to order the production of any agency records improperly withheld from the complainant. In such cases the court shall determine the matter de novo and the burden shall be upon the agency to sustain its action. In the event of noncompliance with the court's order, the district court may punish the responsible officers for contempt. Except as to those causes which the court deems of greater importance, proceedings before the district court as authorized by this subsection shall take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.

(d) AGENCY PROCEEDINGS.—Every agency having more than one member shall keep a record of the final votes of each member in every agency proceeding and such record shall be available for public inspection.

(e) EXEMPTIONS.—The provisions of this section shall not be applicable to matters that are (1) specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy; (2) related solely to the internal personnel rules and practices of any agency; (3) specifically exempted from disclosure by statute; (4) trade secrets and commercial or financial information obtained from any person and privileged or confidential; (5) inter-agency or intra-agency memorandums or letters which would not be available by law to a private party in litigation with the agency; (6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; (7) investigatory files compiled for law enforcement purposes except to the extent available by law to a private party; (8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions; and (9) geological and geophysical information and data (including maps) concerning wells.

(f) LIMITATION OF EXEMPTIONS.—Nothing in this section authorizes withholding of information or limiting the availability of records to the public except as specifically stated in this section, nor shall this section be authority to withhold information from Congress.

(g) PRIVATE PARTY.—As used in this section, "private party" means any party other than an agency.

(h) EFFECTIVE DATE.—This amendment shall become effective one year following the date of the enactment of this Act.