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Moss, John E (Cong)	letter		Lee C. White to Mr. Norris	10/08/65	1
"	letter		Johnson to John Moss	04/02/65	1

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GENERAL (1)
ND14-3

October 8, 1965

Dear Mr. Norris:

Your letter to the President regarding "Executive Privilege" and the classification of governmental information has been referred to me for reply.

I believe you will be interested in the attached copy of a letter from President Johnson to Congressman John E. Moss, Chairman of the House Government Operations Subcommittee, dealing with government information. I believe this makes crystal clear the President's general attitude on the availability of government information.

With regard to your inquiry on the classification of information, I can only report that every effort has been made to insure that there is no overclassification. If you will supply me with any specific materials that have been improperly classified in your judgment, I will be delighted to inquire into them.

Sincerely,

Lee C. White
Special Counsel to the President

Mr. Peter S. Norris
335 N. Friends Street
Whittier, California 90601

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EXECUTIVE

FE 4-1

April 2, 1965

Dear Mr. Chairman:

I have your recent letter discussing the use of the claim of "executive privilege" in connection with Congressional requests for documents and other information.

Since assuming the Presidency, I have followed the policy laid down by President Kennedy in his letter to you of March 7, 1962, dealing with this subject. Thus, the claim of "executive privilege" will continue to be made only by the President.

This administration has attempted to cooperate completely with the Congress in making available to it all information possible, and that will continue to be our policy.

I appreciate the time and energy that you and your Subcommittee have devoted to this subject and welcome the opportunity to state formally my policy on this important subject.

Sincerely,

lbj

The Honorable John E. Moss, Chairman
Foreign Operations and Government
Information Subcommittee
of the
Committee on Government Operations
House Office Building
Washington, D. C.

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REQUEST FOR REPRODUCTION OF DOCUMENTS

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LE/FE 14-1	news release		News Release March 30, 1966	03/30/66	1
"	memo		Memo for President Subject Bill S1166	07/01/66	2
"	report		A Federal Public Record Law - Background	03/28/66	20

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Congress of the United States
House of Representatives
COMMITTEE ON GOVERNMENT OPERATIONS
2157 Rayburn House Office Building
Washington, D.C.

NEWS RELEASE

March 30, 1966
FOR IMMEDIATE RELEASE

FROM THE FOREIGN OPERATIONS AND
GOVERNMENT INFORMATION SUBCOMMITTEE

B-371 Rayburn H.O.B.
CA 5-3741

The Foreign Operations and Government Information Subcommittee today voted to recommend that S. 1160, to establish a Federal Public Records Law, be reported favorably to the House of Representatives by the Committee on Government Operations. The bill will now be referred to the Full Committee for further consideration.

S. 1160 passed by the Senate on October 13, 1965, was approved by the Subcommittee in place of H.R. 5012 (Moss) and 22 similar House bills. Hearings were held on the House bills last year. The Senate bill contains the same public records provisions as the House bills but adds requirements for publishing official records under the Administrative Procedure Act of 1946.

"This legislation is the end product of a 10 year study of government information," Congressman John E. Moss, Subcommittee Chairman, said. "When this measure is enacted into law it will, for the first time in our nation's history, guarantee the people's right to know the facts of government."

S. 1160 was introduced by Senator Edward V. Long of Missouri and co-sponsored by 21 other Senators.

The House Committee on Government Operations is under the Chairmanship of Congressman William L. Dawson.

EXECUTIVE

LE/FEH-1
FE11-1

July 1, 1966
Friday, 6:30 p.m.

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 1160 -- disclosure of government information, Senator Long (Mo.) and Mr. Moss (Calif.)

This bill sets forth some new rules covering the disclosure of government information by the executive branch.

Existing law will be changed in three ways:

(1) Under existing law, only a person properly and directly concerned has a right to information from the executive branch; the new rule will be that any person has such a right.

(2) Under existing law, executive branch documents can be held confidential for good cause found, or in the public interest; the new rule will require proof that the withholding comes within one of nine statutory exemptions.

(3) The bill authorizes U.S. district courts to enjoin an agency from withholding records and to order the agency to produce records improperly withheld.

The departments and agencies have been concerned about this bill for many years, but have come around to the view that they can live with it, and the attached agency reports do not recommend disapproval (with the minor exception of HEW).

The attached signing statement covers two points:

(1) your commitment to the right of the public to have access to government information, and

(2) your awareness of the need to protect certain categories of information such as internal communications, investigatory files, personnel files, and the like which are not specifically mentioned in

the statute but are referred to in the House report.

The agencies are hoping that your signing statement, together with the House report, will guide the interpretation of the statutory language, which is ambiguous in spots.

The bill does not take effect for a year.

The last day for action is Monday, July 4.

Recommendation: That you approve the bill for the reasons stated in your signing statement.

If you decide to disapprove, no further action is necessary, since Congress is in adjournment, and a pocket veto is possible.

Coordination: I recommend that the Attorney General be designated to coordinate the departments and agencies in working out the new rules, probably in the form of a Department of Justice manual of guidelines.

Do you want me to get the Attorney General started on this?

Yes _____ No _____ See me _____.

Milton P. Semer

STAN ARCHIBALD
JACK MATTESON — 180 — X3741

Freedom of Information Files

S. 1160 -- A FEDERAL PUBLIC RECORDS LAW

I. Background

The broad outlines for legislative action to guarantee public access to necessary and proper 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 . . ."1/

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 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 110 year old "housekeeping" statute by enacting a bill introduced in the House by Congressman John E. Moss and in the Senate by Senator Thomas H. Hennings.

Filed 12/29/66

The Moss-Hennings Bill stated that provisions of the "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 these records from the public.

When Congress removed 5 U.S.C. 22 as an excuse for secrecy, more and more agencies fell back on the claim of "executive privilege" to withhold information from the public. The claim of a Presidential privilege to determine what information he, personally, would refuse to divulge to the Congress or the public was nothing new. The claim of administration officials far down the line from the President that they were wrapped in a Constitutional cloak of immunity, even though statutes stated otherwise, was a new concept. This broad claim of "executive privilege" was cut back to size in 1962 when President Kennedy agreed to a Congressional clarification that he, and he alone, would exercise the claim of "executive privilege". The limitation of "executive privilege" to a Presidential prerogative was affirmed by President Johnson in a letter to Congressman Moss on April 2, 1965, and there has been no instance so far of the use of "executive privilege" in the Johnson Administration.2/

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, since 5 U.S.C. 22 was corrected by the Congress and the claim of "executive privilege" was clarified by the President, the Administrative Procedure Act has become the major statutory excuse to hide day-to-day government actions from public view.

The "Public Information" Section of
The Administrative Procedure Act

The entire Administrative Procedure Act, which was adopted in 1946 to bring some order out of the growing chaos of government regulation, is in a sense a public information law. It 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 rule making activities. But most important it required

> "agencies to keep the public currently informed of their organization, procedures and rules." 3/

The intent of the public information section of the Administrative Procedure Act (Section 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." 4/

The Act was signed in June 1946, and one year later the Department of Justice prepared a 139 page brochure interpreting it. A scant two pages was devoted to the important public information section, and the Department made no attempt to clarify the basic problem by defining the most important phrase in the public information section: "matters of official record", which were generally to be made available. The Attorney General's Manual left up to each agency

the decision on what information about the agency's actions was to be classed as "official records". 5/ The Department's attitude toward public documents is indicated in the forward to the Attorney General's Manual by the statement that the manual itself was designed for distribution only within the Government. After great public demand the manual interpreting the law on public access to similar administrative manuals was made available to the public. 6/

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 which was being used as an excuse for secrecy rather than an authority for disclosure. 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 misused public information provisions was introduced simultaneously in the House by Congressman Moss (H. R. 7174) and in the Senate by Senator Hennings (S. 2148). This 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 the same result until the 89th Congress when the Senate passed S. 1160 sponsored by 22 Members of the Senate, and the Foreign Operations and Government Information Subcommittee held extensive hearings on H. R. 5012 and 18 identical House bills.

II. 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

twisted into an authority for withholding, rather than disclosing, information. Such a 180 degree turn of the law from intent to effect was easy to accomplish given the broad and ill defined 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.

In summary, "public information" is a misnomer for 5 U.S.C. 1002, since the section permits withholding of Federal Government 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." These phrases are the warp and woof of the blanket of secrecy which covers the day-to-day administrative actions of the Federal agencies. 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.

Abuse of the "Public Information" Section

Improper denials occur again and again. A denial of access, based upon the authority of 5 U.S.C. 1002, is routine; the decision by a government clerk that a specific document shall be publicly available is the exception.

For more than 10 years, through the administrations of both political parties, the Government Information Subcommittee has documented case after case of withholding based upon 5 U.S.C. 1002.

Earlier this year the Subcommittee uncovered a flagrant 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. This clear legal requirement had been ignored by the Board of Review on Loss of Nationality in the Department of State. In spite of repeated demands to publicize the basic facts about their operations, the Board (which has final authority over the most precious possession of citizenship,) has ignored the law. And there is no legal remedy to force disclosure under the present terms of the Administrative Procedure Act.

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 multi-million 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." 7/

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 the Secretary of the Navy ruled that

> "telephone directories fall in the category of information relating to the internal management of the Navy",

and cited 5 U.S.C. 1002 as his authority for this ruling. 8/

The statutory requirement that information about routine administrative actions need be given only to "persons properly and directly concerned" is relied upon almost daily to withhold government information, for the agencies have ruled that a taxpaying citizen is not, by virtue of his paid-up citizenship status, properly and directly concerned in his government. 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, and this ruling has been reiterated by every Postmaster General in every administration since. 2/

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. 10/

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 is easily twisted into authority for secrecy. In spite of the "public information" title of the act, 10 Federal agencies cited it as late as 1963 as specific "authority for restricting public access to non-security information." And the so-called "public information" section remains as the basic statutory authority for the 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 "Nonpublic" and more complicated "Individual Company Data" to the long and confusing "Limitation on Availability of Equipment Files for Public Reference."

III. The Effect of the Legislation

S. 1160 would assure that Section 3 of the Administrative Procedure Act (5 U.S.C. 1002) is, as originally intended, a Federal Public Records law, not a withholding statute. 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, reasonable access regulations are to be established and fees for record searches charged as is required by present law. 11/

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 and limited 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. 12/

3. It gives an aggrieved citizen a remedy by permitting an appeal to a United States 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. 13/

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 the specific categories of information which may be withheld in a later Subsection.

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.

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 must 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 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. 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 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 the records search or copying fees to be charged as required by present law (5 U.S.C. 140).

Subsection (c) contains a specific remedy for any improper withholding of agency records by granting the United States District Courts jurisdiction to order the production of agency records improperly withheld. The action can be filed in the district where the complainant resides, has his 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 sanction of agency discretion, and 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 [illegible]

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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, open to public inspection, be kept of all final votes of multi-headed agencies. Practices of the many regulatory, adjudicatory and administrative agencies vary in this regard. The subsection would require uniform public access to the records of official votes unless the information must be withheld for national security or other reasons spelled out in the following section.

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 modified by 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". 14/ No government employee, no matter at what 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. Other categories of legitimately-withheld information which had been protected by the "public interest" restriction -- or by no legal restriction at all -- would be protected by later exemptions in S. 1160.

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 protected from disclosure by this exemption, but it 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. 15/

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 protect the confidentiality of information obtained by the government through questionnaires or through material submitted in procedures such as the mediation of labor-management controversies. 16/ It protects 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, manufacturing processes, 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.

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 that advice from staff assistants -- from a counsel to an agency head, for example -- would not be completely frank if they were forced to "operate in a fishbowl." This material and all other "matters of internal management" can be withheld under the present law. To protect information necessary for efficient government operation without 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 normally be disclosed through the discovery process in a legal proceeding would be available to the general public. The definition relies on a body of case law already in being and which will grow in the future.

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. 17/ 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. The exemption is 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 material prepared by government agencies to prosecute persons accused of law violations. Premature disclosure of the information could harm the government's case in court, and an undue delay in disclosure could harm the defendant's case. Thus, the investigatory files can be withheld only to the extent that production of the information would not be required by the rules of discovery or other applicable law.

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, and current regulations of the [illegible] Management prohibit disclosure of these details only if the disclosure would

be prejudicial to the interests of the Government" (43 CFR Part 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 it 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 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. 13/

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 and is used in Subsection (b) of the bill only to signify a private party who cannot be adversely affected by an agency order, opinion, etc. that has not been indexed or made available.

Subsection (h) -- A delay of one 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.

IV - 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 1946-1966 -- 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 iniquity. It provides the necessary machinery to assure the quantity and quality of government information necessary to an informed electorate.

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Office of the White House Press Secretary
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THE WHITE HOUSE

STATEMENT BY THE PRESIDENT
UPON SIGNING S. 1160

The measure I sign today, S. 1160, revises Section 3 of the Administrative Procedure Act to provide guidelines for the public availability of the records of Federal departments and agencies.

This legislation springs from one of our most essential principles: a democracy works best when the people have all the information that the security of the nation permits. No one should be able to pull curtains of secrecy around decisions which can be revealed without injury to the public interest.

At the same time, the welfare of the Nation or the rights of individuals may require that some documents not be made available. As long as threats to peace exist, for example, there must be military secrets. A citizen must be able in confidence to complain to his government and to provide information, just as he is -- and should be -- free to confide in the press without fear of reprisal or of being required to reveal or discuss his sources.

Fairness to individuals also requires that information accumulated in personnel files be protected from disclosure. Officials within government must be able to communicate with one another fully and frankly without publicity. They cannot operate effectively if required to disclose information prematurely or to make public investigative files and internal instructions that guide them in arrriving at their decisions.

I know that the sponsors of this bill recognize these important interests and intend to provide for both the need of the public for access to information and the need of government to protect certain categories of information. Both are vital to the welfare of our people. Moreover, this bill in no way impairs the President's power under our Constitution to provide for confidentiality when the national interest so requires. There are some who have expressed concern that the language of this bill will be construed in such a way as to impair government operations. I do not share this concern.

I have always believed that freedom of information is so vital that only the national security, not the desire of public officials or private citizens, should determine when it must be restricted.

I am hopeful that the needs I have mentioned can be served by a constructive approach to the wording and spirit and legislative history of this measure. I am instructing every official in this Administration to cooperate to this end and to make information available to the full extent consistent with individual privacy and with the national interest.

I signed this measure with a deep sense of pride that the United States is an open society in which the people's right to know is cherished and guarded.

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