

THE WHITE HOUSE
WASHINGTON

October 10, 1974

MEMORANDUM FOR: Phil Buchen
FROM: Ken Lazarus *KL*
SUBJECT: H. R. 12471, Amendments to the
Freedom of Information Act.

Attached is a memo from Ken Cole to the President dealing with the subject noted above which received final congressional action and was sent to the President two days ago.

I have indicated to Geoff Shepard that you favored signing the legislation. If this course is taken, the President's signing statement should make two points: (1) the President can strengthen the legislative history with respect to the procedures governing exemptions 1 and 7; and (2) the preservation of the right of the Executive to litigate any possible encroachment upon core Executive functions in the context of exemption 1 should be noted.

It is my opinion that the President can expect no more than 20-25 votes in the Senate to support a veto. Prospects in the House are even dimmer. Unless the pocket veto is utilized, there is likely no possibility of defeating this bill.

cc: Phil Areeda
Bill Casselman

Attachment



THE WHITE HOUSE

WASHINGTON

October 8, 1974

MEMORANDUM FOR: THE PRESIDENT

FROM: KEN COLE

SUBJECT: H. R. 12471, AMENDMENTS TO THE FREEDOM OF INFORMATION ACT

The Conference Bill passed the Senate by voice vote October 1st and the House yesterday 347 to 2. As previous discussions with your legal staff have indicated, the bill contains a severely objectionable provision providing for judicial review of document classification. There are also difficulties with a section permitting search and disclosure of law enforcement agency investigatory files.

Utilizing your letter to Kennedy and Moorhead of August 20th, the affected Departments (State, Justice, Defense and CIA) as well as OMB and your Domestic Council have worked extensively to moderate these provisions without substantial progress, although a number of your concerns about other problems have been accommodated. The Conference Committee maintained that the House and Senate versions of the judicial review provision were virtually identical and that they therefore lacked the authority to make substantial alterations. The best we were able to obtain was some favorable legislative history in the Conference Report and in the debate on the House floor (attached at Tab A). The affected agencies can be expected to recommend a veto.

Assuming the legislation is transmitted before the scheduled recess, you have basically two options:

Sign the legislation. Recognize the political difficulties of opposing "Freedom of Information"; have a signing ceremony; and issue a signing statement which reinforces your Administration's interpretations of the judicial review of classified documents provision and expresses your intention to seek resolution of the constitutional issue in the courts.



Veto the legislation and simultaneously transmit virtually identical legislation with your proposed changes. This would be preceded by a meeting with the senior Conferees when you endorse all aspects of their bill but one, empathize with their inability to alter this provision in Conference, but point out its crucial effect on the Executive; and ask that they work toward immediate passage of your virtually identical bill instead of attempting to override your veto. A draft veto message is attached for your consideration in this regard (Tab B).

