



THE GENERAL COUNSEL OF THE TREASURY
WASHINGTON, D.C. 20220

OCT 10 1974

Director, Office of Management and Budget
Executive Office of the President
Washington, D.C. 20503

Attention: Assistant Director for Legislative
Reference

Sir:

Reference is made to your request for the views of this Department on the enrolled enactment of H.R. 12471, the Freedom of Information Act Amendments.

The enrolled enactment would amend 5 U.S.C. 552, the so-called Freedom of Information Act, in several respects, each of which is designed to expedite or assure access by the public to information held by the Government.

While this Department is prepared to support the overall objectives and intent of the legislation, it is firmly of the opinion that certain of its provisions require refinement in order to be workable or constitutionally sound. We therefore believe the President should withhold his approval pending such refinements and hereby strongly so recommend. We have had the benefit of a copy of the draft veto message prepared by the Department of Justice. That draft message discusses the major areas in which the enrolled enactment requires refinement. This Department would support the substance of the Justice draft veto message. However, we would like to emphasize several matters which are of peculiar concern to this Department for possible incorporation into a veto message.

The relatively inflexible time limits of subparagraph (6) of 5 U.S.C. 552(a), as it would be amended by § 1(c) of the enrolled enactment, are, in our opinion, totally unworkable. The Internal Revenue Service has literally tens of millions of files in several hundred locations throughout the country. It may well require in excess of the permitted times to locate the record requested. Moreover, tax records are subject to a high degree of confidentiality. An employee of IRS cannot be expected to weigh carefully the taxpayer's right to the confidentiality of his records when he is faced with an inflexible short deadline and his failure to release the records may well result in disciplinary action against him.



Neither the best interests of the taxpayer nor the IRS are served by such a Hobson's choice. Essentially the same argument can be made for the Customs Service.

Because of these factors, the Department believes that at least 30 days should be allowed for a response to the initial request and that there should be a right to an extension of a further 30 days if required, with Court review only for any extension beyond this 60 day period.

While we believe such time limits may be generally warranted, we are firmly of the opinion that they are essential in the IRS and Customs context, if in no other.

We are also particularly concerned about the refinement of the investigatory file exemption contained in § 2(b) of the enrolled enactment. Our principal concern is expressed in the Justice draft veto message and relates to the word "would" which applies to clauses (A) through (F). More and more citizens are using 5 U.S.C. 552 as an alternative or an addition to discovery under Court rules. If the request for records is denied and the denial is appealed to the Courts, it would be necessary to prove, among other things, that production of the records would interfere with enforcement proceedings. This requirement could delay the investigation until the request for records suit is resolved. Such delays may have a significant impact on the collection of the revenue by the Internal Revenue and Customs Services and possibly even the Bureau of Alcohol, Tobacco and Firearms.

We also wish to raise one matter which is not discussed in the Justice draft veto message. Section (b)(2) of the enrolled enactment would add a new paragraph (4) to 5 U.S.C. 552(a), which in subparagraph (4)(F) would have a Court make written findings as to whether agency personnel acted arbitrarily or capriciously with respect to the withholding of documents. The Civil Service Commission is then directed to initiate proceedings to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Civil Service Commission is to submit its findings and recommendations to the agency concerned and that agency is to take the corrective action that the Commission recommends. However, in the Treasury Department final decisions to withhold may be made by Presidential appointees. It is questionable whether the Civil Service Commission has jurisdiction over such officials and whether the agency can take disciplinary action against them. It would seem inappropriate for such action to be taken by an officer other than the President.



In view of all of the foregoing, the Department would strongly support a recommendation that the enrolled enactment, H.R. 12471, not be approved by the President in its present form.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Richard R. Albrecht". The signature is fluid and cursive, with a large, sweeping initial "R".

Richard R. Albrecht
General Counsel

