



NATIONAL AERONAUTICS AND SPACE ADMINISTRATION  
WASHINGTON, D.C. 20546

OFFICE OF THE ADMINISTRATOR

JUN 29 1966

Honorable Charles L. Schultze  
Director, Bureau of the Budget  
Executive Office of the President  
Washington, D. C. 20503

Dear Mr. Schultze:

The Bureau of the Budget has not officially requested the views of NASA concerning the Enrolled Enactment 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, and for other purposes." However, we wish to submit informally some views and comments in respect to this legislation.

Under section 3(c) of the enrolled enactment any person may demand any identifiable records of a Government agency not otherwise made available (pursuant to subsections (a) and (b)) or not specifically exempted under section 3(e) of the enactment. A United States district court, upon complaint by any person, may order the production of such records and, in the event of noncompliance with its order, the responsible government official may be punished for contempt. If the Government agency takes the position that it is properly withholding the records, it has the burden of proof in such district court actions.

There are records in the possession of the National Aeronautics and Space Administration, the release of which would be decidedly contrary to the public interest, but which are not clearly protected, or at least might not be so considered by one or more of the many scores of district court judges in the United States, under the exemption of

section 3(e) of the enactment. For example, accident investigation reports are of particular concern to NASA. The progress of the space program, and the safety of the Government employees and contractors working in the program require that accidents be promptly and fully investigated in order to determine the cause of the accidents and prevent their recurrence. NASA investigators or fact-finding boards must rely in part on the candid opinions and conjectures of those most closely connected with the accident. Such opinions, conjectures, and discussions will neither be candid nor full if the information obtained is not protected. No contractor, for example, can be expected to fully cooperate in the process of determining the cause of an accident, if he knows that the material he submits or offers will be made available to the public, and be used against him in litigation.

Problems might arise also in respect to certain reports which are submitted to NASA by contractors. We have contractors which may be required to report on technical activities of other contractors. For example, a NASA contractor may have certain responsibilities for surveying the complicated process of integrating spacecraft or space vehicle components. This requires access by the contractor to the plants or facilities of other contractors, and familiarity with other contractors' operations. The contractor makes reports on the activities of the other contractors. These reports may include technical, engineering, scientific, and management information. If such reporting contractors are to be effective, it is essential that their reports be given protection similar to that accorded intra-agency or inter-agency memoranda. Few, if any, contractors would permit the reporting contractor access to their plants or exposure to their operations if the reports were available to the public. The usefulness of a reporting contractor would be inconsequential if his reports containing information dealing with technical, scientific, engineering, or management problems are not protected under subsection 3(e).

There are other types of contractor reports which require protection in the public interest. For example, post-flight and post-experiment reports are often submitted to NASA by contractors involved in a flight or experiment. The reports analyze the reasons, technical or otherwise, for the success or failure of a project. NASA depends upon the complete candor of the contractors contributing to the analysis. If the contractors' reports were available to the public, complete candor could not be expected. It is of vital concern to NASA that the contribution of contractors to post-flight and post-experiment analyses be unconstrained.

The legislative history of S. 1160 tends to broaden the coverage of subsection 3(e) and thus, if properly considered by a district court, might help clarify the right of a Government agency to protect the public's interest by withholding records of the foregoing nature; however, this possibility cannot be relied upon to alleviate the serious problems that are certain to arise. The act will become subject to interpretation by a host of district court judges. It is very likely that some district courts will give little weight to the legislative history, and narrow readings to the exemptions of subsection 3(e), with the result that the type of records above mentioned will be ordered released. Furthermore, even if the exemptions are not narrowly construed, the Government nevertheless has the burden of proving that it properly withheld the records. In sustaining this burden, it may be necessary to reveal the very information that it is in the public interest to protect. The right to withhold the information has little substance if, in the very process of enforcing that right, the information must be revealed.

It may also be noted that any person under section 3(c) may demand identifiable public records without any necessity for his showing a reasonable need or legitimate purpose for obtaining them. This legislation may thus have

the effect of requiring agencies to undertake very burdensome administrative actions, solely to provide information to persons requesting it for unjustifiable and frivolous purposes.

In view of the concern expressed above regarding the enrolled enactment in question, we feel that consideration should be given either to a veto, or in the alternative, to the issuance by the President of an interpretative signing statement that would obviate some of the difficulties perceived in the enactment.

Sincerely yours,

A handwritten signature in dark ink, reading "Robert C. Seamans, Jr." in a cursive style.

Robert C. Seamans, Jr.  
Deputy Administrator