

A. HOUSE DEBATE AND VOTE, MARCH 14, 1974;
PP. H1787-H1803

PROVIDING FOR CONSIDERATION OF H.R. 12471, FREEDOM OF INFORMATION ACT AMENDMENTS

Mr. MATSUNAGA. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 977 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. Res. 977

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 12471) to amend section 552 of title 5, United States Code, known as the Freedom of Information Act. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Government Operations, the bill shall be read for amendment under the five-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

The SPEAKER. The gentleman from Hawaii (Mr. Matsunaga), is recognized for 1 hour.

Mr. MATSUNAGA. Mr. Speaker, I yield 30 minutes to the gentleman from California, Mr. Del Clawson, pending which I yield myself such time as I may consume.

(Mr. Matsunaga asked and was given permission to revise and extend his remarks.)

Mr. MATSUNAGA. Mr. Speaker, House Resolution 977 provides for consideration of H.R. 12471, which, as reported by our Committee on Government Operations, would strengthen the procedural aspects of the Freedom of Information Act by amendments to that act. The major amendments would accomplish the following: First, clarify the language in the act regarding the authority of the courts, relative to their de novo determination of the matter, to examine the content of records alleged to be exempt from disclosure under any of the exemptions in section 552(b) of the code; second, amend language pertaining to national defense and foreign policy matters, in order to bring that exemption within the scope of matters subject to an in camera review; and third, add a new section to the act to provide for mechanism to strengthen congressional oversight in the administration of the act by requiring annual reports to House and Senate committees on requests and denials of requests for information.

Mr. Speaker, House Resolution 977 provides for 1 hour of general debate, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Government Operations,

after which the bill would be read for amendment under the 5-minute rule. At the conclusion of the consideration of the bill for amendment, the committee would rise and report the bill to the House with such amendments as may have been adopted. The previous question shall then be considered as ordered on the bill and amendments thereto to final passage, without any intervening motion except one motion to recommit.

The committee report estimates that costs required by the bill should not exceed \$50,000 in fiscal year 1974 and \$100,000 for each of the succeeding five fiscal years.

Mr. Speaker, H.R. 12471 represents the first changes recommended by the Freedom of Information Act since that landmark law was enacted this Congress in 1966. The changes and clarifications proposed in this bill are modifications recommended by a unanimous vote of the Government Operations Committee. Its members in their wisdom have clearly determined that a pressing need exists to lift the secrecy which continues to shroud our Federal agencies. The aim of this measure is to correct the dangerous inadequacies revealed by thorough investigative hearings conducted by the committee's Foreign Operations and Government Information Subcommittee during 1972, as well as through frustrating personal experiences of many in this hall in their dealings with Federal agencies.

Many of the proposed amendments are procedural in nature yet crucial to the intended purposes of the act. The amendments would improve the currently confusing and inadequate indexes of information now available in some agencies. It would correct the procedures for identification of records required by the act. It would require prompt agency responses to requests and provide for reasonable legal cost incurred by aggrieved plaintiffs who are refused mandated agency action on their legitimate requests. This provision would help cover their actions in Federal court to compel uncooperative agencies to release information which properly should be open to public inspection. There are three more substantive provisions in the bill which warrant our full deliberation. One provision would clarify existing language regarding the authority of the courts to examine the content of agency records alleged by their custodians to be exempt from disclosure under section 552(b) of the code. Another provision would permit in camera review by the courts of matters pertaining to national defense and foreign policy, as defined by criteria established by Executive order. This will permit such matters to be included with the existing provision in the act which currently allow in camera review in nine delineated areas. I refer to section 552(b) of the code.

The third major provision would strengthen the mechanism for congressional oversight in the administering of the act. This amendment would require the filing of annual reports by the agencies to House and Senate committees. These reports would delineate statistical data and other information on denials of requests under the act, administrative appeals of denials, rules promulgated by the act, and fee schedules and funds collected for searches and reproduction of requested information.

Mr. Speaker, the purpose of this bill is to insure that the people's right to know what their Government is doing will be protected and that their access to legitimate information will be unimpeded. The

Freedom of Information Act was intended to help make the democratic process work by assuring that the conduct of Government in our republic would remain open for all to view, except where genuine national security and foreign policy concerns would be jeopardized. The intent was, and is, to assure that our people will remain an informed and enlightened citizenry.

Experience has taught us, however, that the scope of this legitimate shield which was provided by the act could be stretched to suit particular partisan or personal purposes. It could be extended to veil matters unfavorable to the custodian agency or embarrassing to officials therein.

What this bill would do is require those agencies which have resisted proper public scrutiny to produce to a Federal judge valid reasons based on compelling national security and foreign policy interests explaining why the American people should not know of the agency's activities or policies. All of this would be done in the strictest secrecy in the closed chambers of a Federal judge. Those agencies which claim the need for secrecy will have their confidentiality safeguarded, unless, of course, the court finds their claim unreasonable. The public, including the press and the Congress, will be assured that the determination of what should be kept secret will be decided by an impartial party, not by the whim of an overly protective bureaucrat or agency official who may, under the present law, cast the cloak of national security over every detail of agency business. The bill, in brief, provides for the fullest measure of protection for legitimate Government secrets while allowing for disclosure of that which the public is entitled to know.

Mr. Speaker, as a cosponsor of this measure and of the original act, I firmly believe that this bill, the product of months of intensive investigation and review by the respected members of the Government Operations Committee, offers a sensible and workable compromise between the requirements of a democratic Government and the appropriate needs of Government and national security. I congratulate the most distinguished chairman of the committee, my dear friend and colleague from California, Chet Hollifield, and the hard-working principal sponsor of this bill, my respected colleague, Bill Moorhead, for their reasoned approach to this vital legislation.

Mr. Speaker, I urge the adoption of House Resolution 977 in order that H.R. 12471 may be considered and passed overwhelmingly.

Mr. DEL CLAWSON. Mr. Speaker, I yield myself such time as I may consume.

(Mr. Del Clawson asked and was given permission to revise and extend his remarks.)

Mr. DEL CLAWSON. Mr. Speaker, the gentleman from Hawaii (Mr. Matsunaga) has explained the bill thoroughly, also the resolution, but let me just summarize very quickly:

Mr. Speaker, House Resolution 977 is the rule providing for consideration of H.R. 12471, the Freedom of Information Act Amendments. This is an open rule with 1 hour of general debate.

The purpose of H.R. 12471 is to provide easier access to Government documents for the public.

The bill sets rigid time limits on the agencies for responding to information requests, shortens substantially the time for the

ment to file its pleadings in Information Act suits, and authorizes the award of attorney's fees to successful plaintiffs in such suits. In addition, each agency is required to submit an annual report to Congress evaluating its performance in administering the act and "agency" is defined to include the Executive Office of the President.

The committee report estimates the cost of this bill at \$50,000 for the remainder of fiscal year 1974, and \$100,000 for each of the succeeding five fiscal years.

Mr. Speaker, I urge the adoption of this rule in order that the House may begin debate on H. R. 12471.

Mr. Speaker, I have no requests for time, and I reserve the balance of my time.

Mr. MARSUNAGA. Mr. Speaker, I have no requests for time.

Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MOORHEAD of Pennsylvania. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material on the bill that we are about to consider, H. R. 12471 (to amend the Freedom of Information Act).

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

FREEDOM OF INFORMATION ACT AMENDMENTS

Mr. MOORHEAD of Pennsylvania. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H. R. 12471) to amend section 552 of title 5, United States Code, known as the Freedom of Information Act.

The SPEAKER. The question is on the motion offered by the gentleman from Pennsylvania (Mr. Moorhead).
The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H. R. 12471, with Mr. Eckhardt in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from Pennsylvania (Mr. Moorhead) will be recognized for 30 minutes, and the gentleman from Illinois (Mr. Erlenborn) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Pennsylvania (Mr. Moorhead).

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I yield myself such time as I may consume.

(Mr. Moorhead of Pennsylvania asked and was given permission to revise and extend his remarks.)

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I will be brief in my remarks explaining the bill, which has the bipartisan support of the membership of our committee and which was reported unanimously by the Government Operations Committee last month.

H. R. 12471 is a bill to insure the right of the public to ask for and receive information about what their Government is doing. It contains amendments, essentially procedural in nature, to the Freedom of Information Act, for the most part setting ground rules by which the Federal agencies must respond to inquiries from the public.

The major substantive provision of this bill clarifies the original intent of Congress that executive agency decisions to withhold information from the public may be reviewed by the judicial branch of Government.

Amendment No. 3—Section 1(c)7 Time limits:
Sets a fixed time of 10 working days for response, 20 working days for administrative appeal and 20 days for a responsive pleading to a complaint in a district court.

Amendment No. 4—Section 1(e) Attorney fees and court costs:
Allows the court at its discretion to award reasonable attorney fees and costs to plaintiffs who prevail in freedom of information litigation.

Amendment No. 5—really two amendments—Section 1(d) and section 2, Court review:
Would, among other things, overrule the Supreme Court decision in EPA against Mink, by first making it clear that a court may review records in camera and,

Second, authorizing a court to look behind a security classification label to see if a record deserved classification under the "criteria" of an Executive order.

Amendment No. 6—Section 3 Reports to Congress:
Requires affected agencies to submit annual reports to the appropriate committees of the Congress on their freedom of information activities.

Amendment No. 7—Section 3 Definition of "agency":
Expands the definition of agency for the purposes of the Freedom of Information Act to include the Executive Office of the President, Government corporations, and Government controlled corporations, as well as those establishments already recognized as Federal agencies.

The amendments to the Freedom of Information Act provided in H. R. 12471 would take effect 90 days after enactment.

Mr. Chairman, I want to stress again the bipartisan nature of and support for this bill. It is a carefully drafted piece of legislation operations and the public's "right to know."

This bill has been unanimously approved by the Foreign Operations and Government Information Subcommittee and the full Government Operations Committee and merits the support of this House.

Mr. VAN DERLIN. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD of Pennsylvania. I yield to my friend, the gentleman from California (Mr. Van Deerlin).

Mr. VAN DEERLIN. Mr. Chairman, I am one of an overwhelming majority of this House who will be in support of the legislation before us this afternoon. I will confess to some sense of trouble over the portion of the bill to which the able subcommittee chairman has just referred, the definition of agencies and organizations to be affected by the amendments.

The reference to Government-controlled corporations in the legislation itself raises no red flags. I am, however, troubled by the report accompanying the bill which reads on page 8 as follows:

The term "Government controlled corporation," as used in this subsection, would include a corporation which is *not* owned by the Federal Government, such as the National Railroad Passenger Corporation (Amtrak) and the Corporation for Public Broadcasting (CPB).

The Corporation for Public Broadcasting, as the gentleman knows, was created by Congress as a means of pumping Federal money into broadcasting without having Federal control over broadcasting. It seems to me that this arrangement very happily met the first amendment requirements for this type of organization. We wanted to find some way of providing Federal assistance to educational and public broadcasting needs—which includes the coverage of public events and often political subjects. There have been ongoing efforts to find a means of financing this organization which would keep Congress, which would keep the executive branch, and which would keep politicians at any level out of policymaking in public broadcasting.

I think that this administration, while it was chided by our Committee on Interstate and Foreign Commerce many times for what we thought was its slowness in coming up with long-range financing plans, did act in good faith and out of the same sense of responsibility we all felt in Congress for maintaining the independence of this very sensitive broadcasting operation.

This was by no means intended to be a Government information agency or a Government broadcasting agency. I know the gentleman in the well feels as strongly as I do the necessity of protecting the Corporation for Public Broadcasting against the intrusion of political action.

Would the chairman be kind enough to comment on this phase of the legislation?

Mr. MOORHEAD of Pennsylvania. I would say to the gentleman that if in fact of law the Public Broadcasting Corporation is not a Government-controlled corporation, then the words of the statute and not the words of the report would control. I would also say to the gentleman that this is not a bill to provide Government access to information but it is for the people, the individual citizens across this country. I think the language of the statute would control over the language of the report.

Mr. VAN DEERLIN. If the gentleman will yield further, the right of the individual inquiry is backed up by the majesty of Government through this legislation. Where it would concern an organization such as Amtrak, I would say hooray.

But I do raise the question in regard to the CPB, and I am glad for the opportunity the chairman of the subcommittee has provided to make legislative history of this. In my opinion there would never be a question on which the Corporation for Public Broadcasting would seek to hide information. They have always testified freely before both our committee and the Committee on Appropriations, but I think we must be ever mindful of the necessity for guarding a sensitive agency such as this against political inquiry.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I yield to the gentleman from Texas.

Mr. WITTE. Mr. Chairman, I appreciate the gentleman yielding to me. On page 4 of the bill, the bill does recite that on or before March 1 of each calendar year, each agency shall submit a report covering the preceding calendar year, and then names the specific committees to receive the reports.

I wanted to advise the gentleman that I intend to offer an amendment that in accordance with rule XXIV of the House the submission of reports would be to the Speaker of the House and to the President of the Senate, who would then submit it to the appropriate committees. Would the gentleman have any objection to the submission?

Mr. MOORHEAD of Pennsylvania. At first blush, I would not. I would like to submit it to my colleague on the other side of the aisle. I want to stress again the bipartisan noncontroversial nature of this legislation. It had unanimous approval of the subcommittee and the full committee. I urge its adoption.

Mr. ERLÉNBOEN. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD of Pennsylvania. Can the gentleman yield on his own time?

Mr. ERLÉNBOEN. I wanted to know if the gentleman would yield for a question.

Mr. MOORHEAD of Pennsylvania. Of course, I yield to the gentleman.

Mr. ERLÉNBOEN. The question has been asked by Members on this side of the aisle as to the meaning of two definitions of agencies to include the Executive Office of the President.

I want to ask the gentleman if it is not correct, as it states in the report of the committee, that the term "establishment in the Executive Office of the President" as it is contained in this bill means functional entities, such as the Office of Telecommunications Policy, and the Office of Manager of the Budget, the Council of Economic Advisers and so forth; that it does not mean the public has a right to run through the private papers of the President himself?

Mr. MOORHEAD of Pennsylvania. No, definitely not. I think the report is crystal clear on that. I think the gentleman for bringing it up.

Mr. ROUSSSEOR. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD of Pennsylvania. I yield to the gentleman.

Mr. ROUSSSEOR. I thank the gentleman for yielding. Does this legislation mean that foreign governments or individuals from foreign governments will have the same kind of access as any American citizen, or is it just limited to American citizens? I am referring especially in the case where an individual has to go to a court suit.

Mr. MOORHEAD of Pennsylvania. The legislation says any person, that would exclude foreign governments.

Mr. ROUSSELOE. What about a foreign ambassador or a foreign alien, say the Russian Ambassador?

Mr. MOORHEAD of Pennsylvania. I would think if he had standing in a court as an individual, not as an ambassador, that he would have the same rights in connection with this; subject, of course, to the limitations provided in the original act.

Mr. ROUSSELOE. So the interpretation of the gentleman would be that foreign citizens residing here could, in fact, have the same kind of access to Government agencies as a U.S. citizen.

Mr. MOORHEAD of Pennsylvania. Whatever the situation, I would say to the gentleman from California it is not changed by the legislation before us. He would have to go back to the original 1966 act to determine that, but we are not changing that. We are not increasing the coverage of the bill to additional people.

Mr. ROUSSELOE. Except in this legislation we say that "the court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section."

So, in fact, foreign citizens and aliens, I was thinking particularly of alien groups that reside here, if they would decide to go to court and the court could, in fact, assess the U.S. Government for their legal fees.

Mr. MOORHEAD of Pennsylvania. Of course, it is conceivable; but first the plaintiff has to prevail, and even if he prevailed, the courts will grant it only at their discretion.

Mr. ROUSSELOE. But it is clearly possible the way the courts are today, they are very lenient with our money. I wondered if this is not a possible flaw in this legislation.

Mr. MOORHEAD of Pennsylvania. I think this section is important because there is often no monetary involvement in this field of litigation and it does discourage individuals from bringing suits.

Mr. ROUSSELOE. Except it says the court may assess against the United States for attorney fees.

So, it is another form of legal fee at the expense of the U.S. Treasury. Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I might point out to the gentleman that in this kind of litigation, the plaintiff gets no monetary award from winning the case. He is serving all of the people by making Government more open if he prevails.

Mr. ROUSSELOE. Except that he may keep it in court by trying to persuade the judge or the court itself to pay his fees.

Mr. MOORHEAD of Pennsylvania. Only, I say to the gentleman, if the court finds the Government has improperly withheld material, Mr. ROUSSELOE. Mr. Chairman I appreciate the gentleman's comments.

Mr. MOSS. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I yield to the gentleman from California.

Mr. MOSS. Mr. Chairman, I was merely going to make the point that in order for such a person to prevail, the original withholding would have had to have been an improper act, or otherwise he could not prevail.

Mr. ROUSSELOE. Mr. Chairman, where does the language say that? Mr. MOSS. The original act is to prevent the improper withholding.

Mr. ROUSSELOE. But, where in this is it? Mr. MOSS. The court here examines in camera and determines whether or not the information meets the test for privilege or whether it is going to be released.

Mr. ROUSSELOE. But the court has the real decisionmaking power to decide?

Mr. MOSS. The court has the decisionmaking power.

Mr. ROUSSELOE. It is not necessarily what the agency feels and/or the Congress; it is the court.

Mr. MOSS. It is the court, because it is a matter that is being tried in the courts in this case.

Mr. ROUSSELOE. Well, my concern is in the case of aliens and foreign people and others who have all kinds of reasons to try to attack agencies of our Federal Government. This appears to me to be a free court costs. That is my only concern.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I would say to the gentleman that in the 7-year history of the act, we know of no case where an alien or foreign official has brought action. It could be brought under existing law, and it is not changed by this bill.

Mr. ROUSSELOE. However existing law does not provide for the court to assess the U.S. Government, does it? Does the present law provide for this?

So, this is really new law on the books, and that was my point.

Mr. MOORHEAD of Pennsylvania. Of course, it is new law.

Mr. ROUSSELOE. Mr. Chairman, I thank the gentleman.

THE CHAIRMAN. The chair recognizes the gentleman from Illinois (Mr. ERLENBORN).

Mr. ERLENBORN. Mr. Chairman, I yield myself such time as I may consume.

(Mr. ERLENBORN asked and was given permission to revise and extend his remarks.)

Mr. HORTON. Mr. Chairman, will the gentleman yield?

Mr. ERLENBORN. Mr. Chairman, I yield to the gentleman from New York.

Mr. HORTON. Mr. Chairman, I want to commend the gentleman in the well, the gentleman from Illinois (Mr. ERLENBORN) and the chairman of the subcommittee, the gentleman from Pennsylvania (Mr. Moorhead) for their leadership in bringing this bill to the floor. I am one of the sponsors of the bill, and I certainly hope that the House will enact this legislation.

Mr. Chairman, I rise in support of H.R. 12471, a bill to strengthen the people's right to be informed of their Government's activities. Our form of government—in fact the foundations of our society—rest on an informed citizenry. Nothing could be more essential than measures like the one before us now to the safeguarding of our democratic ideals.

As the ranking minority member of the Committee on Government Operations, I am very fortunate to have participated in writing laws in this area. Eight years ago, I voted in favor of the original Freedom of Information Act. For 5 years, I served on the Foreign Operations

and Government Information Subcommittee, which investigated the performance of Federal agencies under the act. Last February, I introduced, along with several of my colleagues on the committee, a bill to improve the administration of this law. And today, I will vote for a measure which fulfills that same objective.

Almost every provision of H.R. 12471 is similar, if not identical, to a provision of H.R. 4960, the bill I sponsored and testified upon before the subcommittee. I am happy to see these points in the legislation we are now considering.

This measure requires agencies to perform many functions which will directly and citizens in obtaining Government documents. It stipulates that agencies publish indexes of their material, respond to requests that reasonably describe records and decide whether to comply with those requests within specific periods of time. The bill also imposes several obligations which will indirectly assist individuals. Under H.R. 12471, courts could review agency classification of material which was allegedly made for national security reasons and could force the Government to pay attorney fees and other litigation costs in suits where the Government does not prevail. Agencies would have to respond to court suits quickly and report to congressional committees annually on how they fulfilled their responsibilities under the Freedom of Information Act.

Mr. Chairman, all these changes in the law will advance the people's right to know what their Government is doing. I commend their enactment to all Members.

(Mr. Horton asked and was given permission to revise and extend his remarks.)

Mr. YOUNG of Florida. Mr. Chairman, will the gentleman yield?

Mr. ERLÉNBORN. Mr. Chairman, I yield to the gentleman from Florida.

Mr. YOUNG of Florida. Mr. Chairman, I would ask that the gentleman from Illinois, during his comments, might give some specific comments concerning page 7 of the report, the paragraph entitled, "National Defense and Foreign Policy Exemption," which refers to the language on page 5 of the bill. This is the concern I have, and I would appreciate very much a discussion of that subject.

Mr. ERLÉNBORN. Mr. Chairman, I will be happy to do that, and I will be happy to answer any further questions the gentleman from Florida may have.

Mr. Chairman, I am happy to join with the chairman of the Foreign Operations and Government Information Subcommittee, Mr. Moorhead of Pennsylvania, in advocating H.R. 12471.

This bill would amend the Freedom of Information Act in several ways, all designed to ease the public's access to Government documents. It is the product of bipartisan effort by our subcommittee. We began our consideration of the Freedom of Information Act with two bills, one by Mr. Moorhead and one by Mr. Horton—the ranking minority member of the Government Operations Committee—and myself. H.R. 12471 combines features of both those measures and has the unanimous support of both the Foreign Operations and Government Information Subcommittee and the full Government Operations Committee.

Mr. Chairman, the Freedom of Information Act became law on July 4, 1966, and took effect exactly 1 year later. I am proud to have played a part in securing its passage in the House, along with the gentleman from California (Mr. Moss) and our former colleague from Illinois, Don Rumsfeld. The act's guiding principle is that public access to Government information should be the rule, to be violated only in the specific areas which Congress believes are in the national interest to exempt.

In the few years that the act has been in existence, the executive branch of Government has become far more open to citizens of this country. Government officials and employees are to be congratulated for generally adopting attitudes which are in conformity with the act, but very different from the previous policy of nondisclosure.

The record of compliance with the law has not been perfect, however. In extensive investigative hearings over the past 3 years, our subcommittee has discovered many instances of failure to respond to the dictates of this act and many efforts to frustrate them by delaying release of public material.

The bill before us now is intended to remedy problems we have found.

Some individuals have experienced difficulty in learning what types of documents are in the files of various agencies. Section (1)(a) of H.R. 12471 requires agencies to publish their indexes of materials. Some citizens have had requests for information denied on the grounds that they did not identify precisely the documents they wanted. The act was meant to require individuals to describe records reasonably, not identify them by specific number. Section (1)(b) makes this original intent clear.

Some people have had to wait excessive periods of time for responses to their requests. Section (1)(c) requires agencies to live up to the spirit, as well as the letter, of disclosure by answering requests promptly.

The Supreme Court has held that courts may not permit citizens to view matters which have been classified for reasons of national defense or foreign policy, and that courts may not examine those documents to see whether they have been properly classified. Sections (1)(d) and (2) of H.R. 12471, taken together, permit courts to examine material in chambers and determine whether it truly falls within the exemption for national defense or foreign policy classified matter. This change should persuade agencies to consider more carefully whether to classify material.

In addition, H.R. 12471 mandates that the Government respond quickly to complaints filed under this act and, at the discretion of courts, pay attorney fees and other litigation costs incurred by victorious plaintiffs. The measure also establishes that agencies shall report annually to the Congress on their performance under the act. All these provisions are designed to stimulate agencies to comply more completely and promptly with the law, and on close questions, to decide in favor of disclosure of information to the public.

Before closing, I would like to comment about an omission in H.R. 12471. H.R. 4960, which Mr. Horton and I introduced and on which the subcommittee held hearings, included a title establishing an independent Freedom of Information Commission.

Our belief was that the existence of the Commission, authorized to review negative responses to information requests, would have been an incentive for positive agency responses. With authority to examine classified material, the Commission could have relieved judges of the burden of in camera inspection of information. Although the Commission's rulings would have been advisory rather than mandatory, its rulings would have constituted prima facie evidence of improper withholding of records. Thus, we anticipate fewer FOI cases would end up in the courts.

The decision not to establish a commission does not render H.R. 12471 defective. We can establish such a commission at a later time, if need be. I mention it only to serve notice that we are serious about making the Freedom of Information Act work.

Mr. Chairman, all the changes which the bill before us makes in procedures of the Freedom of Information Act are beneficial. They will lead, I believe, to fuller and timelier sharing of information by the Government with the people of this country. The objective is worthy, and the means of achieving it are fair. I urge approval of this bill.

Mr. ARCHER. Will the gentleman yield?

Mr. ERLÉNBOEN. I will be happy to yield to the gentleman.

Mr. ARCHER. Do I correctly understand this legislation is to require the prompt distribution to any individual in this country by sale or otherwise of Government documents that are not otherwise classified as being in the national security? Is that basically correct?

Mr. ERLÉNBOEN. Yes. That is basically correct. The present law requires that. The Freedom of Information Act on the books requires that, with certain exemptions that are spelled out in the act.

Mr. ARCHER. There is one existing practice that troubles me already. I wonder if this bill would increase that, that is, the sale by the Federal Government of a list of names that they accumulate which are then used by the purchaser for the purpose of solicitation or mass mailings or harassment of some nature or another. I have legislation that I have introduced which would prohibit the Federal Government from selling these lists of names to various people in this country. I wonder what this act does about it.

Mr. ERLÉNBOEN. We considered that problem in the subcommittee and we had testimony from interested individuals as well as the agencies involved. I must confess to the gentleman that we found it difficult to resolve the problem to everyone's satisfaction and, therefore, it is not included here in this legislation.

I am sensitive to the problem, as is the gentleman from New York (Mr. Horton) who has also introduced legislation similar to that to which the gentleman refers. As an example, I understand that the Department of the Treasury has made available the names of all those who are listed as collectors of or dealers in guns and weapons, which made it possible for those with sticky fingers and the ability to break into a person's home to find out where such weapons might be available, where they could identify people who were collectors of guns. It was not the intent of the act, and I hope we find a way of resolving that problem.

Mr. YOUNG of Florida. Will the gentleman yield?

Mr. ERLÉNBOEN. I yield to the gentleman.

Mr. YOUNG of Florida. I thank the gentleman for yielding.

On the point I had originally raised, the language of the report on page 7 seems to me to give the court the privilege to examine now in camera any information or documents that might be relevant to the national defense. It is a change from the existing law. That is new law, then.

Mr. ERLÉNBOEN. Yes. That is one of the purposes of this bill; namely, to change existing law in this respect. It is the result of the decision in the Mink case mentioned by the chairman of the subcommittee, Mr. Moorhead. In that case the Supreme Court said that the courts were not invested with authority to go behind the stamped document. Therefore, the decision of any person in the executive branch who puts a stamp of "secret" or "classified" or whatever it might be on a document could not be reviewed by the Court. It is clearly the intention of the committee to make these documents subject to inspection in camera and in chambers, not in public, by the judge, who can then decide as to whether the classification is proper under the Executive order authorizing such classification.

Mr. YOUNG of Florida. Will the gentleman yield further?

Mr. ERLÉNBOEN. I yield to the gentleman.

Mr. YOUNG of Florida. I have a serious concern about that very point, and I wonder if the gentleman will respond to this question. Just what is it that makes the judge an expert in the field and one who would have sufficient knowledge so that he can make a determination as to what is or is not to be made available and what should be prohibited from public distribution?

Mr. ERLÉNBOEN. The only way I can answer the gentleman is it is the same thing that makes judges experts in the field of patent law and copyright law or all of the other laws on which they have to pass judgment. There are no specific qualifications for a judge in these areas; a judge is a judge. I have the same concern as the gentleman has. That is why I recommended, along with Mr. Horton, the creation of the Freedom of Information Commission which could develop expertise in this area and act as a master in chancery or an adviser to the court. I expect, as I said in my prepared remarks today, that after we have some experience under this new provision others may agree that we need a Freedom of Information Commission.

Mr. YOUNG of Florida. Will the gentleman yield further?

Mr. ERLÉNBOEN. I yield to the gentleman.

Mr. YOUNG of Florida. Let me respond to the gentleman's statement by saying that in the cases you mentioned the judge does have written law and precedents on which to base a decision, but in the case of classification and in the case of making the decision of whether a matter is relevant to national defense and national security he does not have this basis on which to make such a decision.

Mr. Chairman, I still think that insofar as the international community is concerned, that perhaps the judge might consider something very, very important to a possible potential enemy whereas it might be has no special background or expertise to be able to make a reasonable judgment in that regard.

Mr. ERLÉNBORN. The gentleman is accurate in saying that there is no law that establishes the criteria. We learned as a result of the Ellsberg case that there is no official secrets act in this country, even though in other countries, England, for one, there are. Therefore, what we operate under in the field of classification is the Executive order. We have an amendment in this bill to paragraph 1 of the list of exemptions so as to read as follows:

(1) authorized under criteria established by an Executive order to be kept secret in the interest of the national defense or foreign policy.

This will give direct attention of the court to the Executive order rather than the law, since we have none. The Executive order that establishes the criteria in such an instance would be used by the court to pass judgment on whether the criteria in the Executive order has been made by some flunky in the Department of Defense, and who has improperly classified such document.

Mr. YOUNG of Florida. Mr. Chairman, if the gentleman will yield further, I have one more question.

Mr. ERLÉNBORN. I am happy to yield to the gentleman from Florida.

Mr. YOUNG of Florida. Mr. Chairman, I want to compliment the gentleman in the well and the leadership of the committee for the work that they have done in bringing out the Freedom of Information Act amendments. Freedom of information is something which I do agree with very, very strongly. I believe that our people have the right to know what the Government is doing, or is not doing. But again I must register my objection, and my strong concern about this particular matter as it relates to our national defense, and as to who might be making important decisions relative to our national security matters.

Mr. McCloskey. Mr. Chairman, if the gentleman will yield, just by way of responding to the inquiries of the gentleman from Florida (Mr. Young), because I believe this matter is one that should be made clear insofar as the legislative history is concerned: The framework of the committee's consideration of this bill was against the recent decision in the Sirica case, where the Circuit Court of Appeals in the District of Columbia did provide for in camera inspection of documents upon which the President claimed executive privilege. I think it is clear from the language in that decision that the court was prepared to bend over backward to honor the executive claims of privilege; in fact, the import in that decision was that only if the need for such revelation of the information to the grand jury outweighed the national interest in protecting the information would the court order that it be disclosed to the grand jury in that case. And all of the other decisions which we have before us in this field indicate the great reluctance of the court to overrule a contention that the national security interests are paramount. And we pass this into law with the confidence that any court will examine very closely the matter of national security interest as against a citizen seeking disclosure of information, and that the court is going to be very reluctant to override an administrative decision which exists in the mind of the administration relative to declassification of such information. And what we have done in this bill, I think, reaches a compromise that the committee has

in the language of this bill that, insofar as the safeguards of our national security are concerned, that should not alone be the single criteria that would compel a court not to override such an Executive order supposedly only because of national security.

Mr. ERLÉNBORN. Mr. Chairman, I thank the gentleman from California (Mr. McCloskey) for his contribution, and I agree with what the gentleman has said. There will certainly be a strong presumption in favor of declassification. I say this because of the testimony before our committee which indicated that the power to classify has been abused considerably by various agencies of this Government.

As I say, we had plenty of testimony that would lead us to believe that documents have been improperly classified in the first place and, second, not declassified within a reasonable period of time.

As an historical example, there is the so-called Operation Keelhaul in which documents have been kept secret for 25 or 30 years, and which still are classified, to keep information from the public about what apparently was a very black day in the history of the United States. We really do not know why the secrecy has been kept, even though there have been attempts by historians to get at them. The documents relate to events which occurred in 1946, immediately after World War II. The fact that they are still classified, raised questions in one's mind as to whether they are properly classified and should still be kept from the public today, in 1974.

Mr. YOUNG of Florida. I do not deny that at all. There are classifications that probably have been the result of someone being overly cautious in their classification. I would make the point though that if we are going to make a mistake, it might be better to consider making that mistake in the interest of a strong national security.

The second point, in response to the gentleman from California, I recognize the attempts of impartiality of the courts, and I believe that from the standpoint of their sincerity they certainly could be trusted with this program. But I am also aware, as is he, of the vast number of unauthorized leaks of information, leaks in fact that are contrary to the law that have come from some of these courts that the gentleman has mentioned.

Mr. Chairman, I rise in opposition to H.R. 12471, amending the Freedom of Information Act of 1966. I am certainly not opposed to the principle of streamlining the act through certain procedural changes, but I have grave reservations over the contents of one change which strikes at the heart of our national security.

My record in support of freedom of information cannot be challenged. As a Florida State Senator, I was one of the primary supporters of Florida's landmark "Government in the Sunshine" law. Since coming to Congress, my legislative activities have included legislation to open House committee meetings to the public, and H.R. 1291, a bill to amend the Freedom of Information Act to require public disclosure of records by recipients of Federal grants. My bill requires that a willingness to provide full public disclosure be made a condition to receiving a Federal grant; that complete records must be kept on how these funds are spent; and that refusal to make these records public will result in the grant being withdrawn.

I support the bill before us today in its efforts to speed public access to agency information and to require agencies to provide this informa-

tion in a timely fashion. These procedural changes would be helpful in carrying out the intent of the original act.

However, section 552(b)(1) of the United States Code clearly states that the Freedom of Information Act does not apply to matters that are specifically required by Executive order to be kept secret in the interest of national defense or foreign policy. This is the first of nine specific exemptions from the provisions of the act.

My distinguished colleagues of the Government Operations Committee, however, have included in their so-called procedural amendments a change in the language of section 552(b)(1) which could effectively negate our national security classification system. Taken in conjunction with language elsewhere in the bill, it permits the courts to examine in camera the contents of agency records to determine if a national security exemption has been properly applied.

This is a specific grant of authority to the courts to second-guess security classifications made pursuant to an Executive order and thus constitutes a clear threat to our national defense. As the Justice Department noted in their report to the Congress on this legislation:

No system of security classification can work satisfactorily if judges are going to substitute their interpretation of what should be given a security classification for those of the government officials responsible for the program requiring classifica-

My distinguished colleague from Illinois, the ranking minority member of the Government Operations Committee, Congressman Erlendorn, himself has admitted in our colloquy earlier today:

That there will certainly be a strong presumption in favor of declassification.

This does not bode well for top secret documents on our national defense or foreign policy should some judge decide it would be more in the interest of the Nation to make them available to the world.

Both my distinguished colleague from Illinois and my colleague from California (Mr. McCloskey) have pointed out some of the defects of the existing classification system, especially with regard to older defense materials. To which I would respond that these defects have already been recognized and an accelerated effort put underway to remedy them.

In Executive Order 11652, dated March 8, 1972, President Nixon not only recognized the problems of overclassification and the denial to historians and other interested parties of decades-old war records and foreign policy documents, he ordered the implementation of an accelerated declassification program. Since that time, the National Archives and Records Service has sifted through close to 100 million documents and reclassified most of them so that they are available to the public. According to the President's timetable, anything over a certain age is automatically declassified; other documents of a later date are subject to review. Eventually, anything over 6 years of age will be subject to automatic review and declassification unless the classifying agency can prove that the materials still fall under the national security aegis.

Therefore, because this procedure is now in effect, it is clear that the thrust of the committee amendment is against current defense and foreign policy secrets.

Mr. Chairman, I do not believe that the American people want a judge to decide what national defense and foreign policy information

should be publicized. In the Sixth Congressional District of Florida which I have the privilege of representing in Congress, 86.2 percent of those responding to my March 1972 congressional questionnaire stated that they did not believe that the news media should have the right to publish or broadcast secret Government information dealing with national security.

As a former member of the House Armed Services Committee and as one who has long been concerned over the erosion of our national defense and national security standards, I cannot stand by and see this legislation breeze through the House without drawing attention to its one glaring defect. Mr. Chairman, with this exception, I support the legislation and its purposes, but will vote against it on final passage to register my concern over the weakening of our national security, and hope that our colleagues in the other body will eliminate this invidious provision so that I can enthusiastically support the bill in its final form.

Mr. ERLENDORN. I thank the gentleman for his comments. I now yield to the gentleman from Nebraska (Mr. Thone).

Mr. THONE. I thank the gentleman for yielding.

(Mr. Thone asked and was given permission to revise and extend his remarks.)

Mr. THONE. Mr. Chairman, having assisted in the authorship of an open records bill in Nebraska and the open meetings law we have in that State, and the partially open court law, I strongly endorse the legislation.

Mr. Chairman, I rise in support of H. R. 12471, a bill of which I am proud to be a cosponsor.

For many years, I have advocated openness in Government. We must make certain the public's business is conducted in public. Before I came to Congress, I helped to draft and worked for passage of Nebraska's open meetings and open records laws. As a member of the Foreign Operations and Government Information Subcommittee, I have been impressed with the part the Freedom of Information Act has played in making Government more accessible to the people. Our hearings last year showed, however, that there is a need for improvement of this law.

The hearings demonstrated that if there is a way that a law can be interpreted to promote secrecy and to deny the public access to public records, some Government officials will find that way. For example, the present law states that agencies must respond to any request for language so that a citizen can obtain a document only if he or she knows the precise title or the file number. To prevent such pettifoggery, we propose to amend the law so that agencies will have to respond to any request which "reasonably describes such records."

Here is another example of the bureaucratic urge for secrecy. The present law states that an agency must make nonclassified Federal records "available for public inspection by copying." Some agencies have interpreted this language to mean that a citizen can find out the language in a public document only if he comes to the agency headquarters with pencil and paper and copies what is in the record.

To correct this, the proposed language declares that with such nonclassified information, the agencies shall "promptly publish and distribute—by sale or otherwise—copies."

Information is available only if it is timely. Therefore, there are several amendments to the Freedom of Information Act in the bill before you that would require the Government to act more expeditiously. If an agency is in doubt as to whether a record should be made available to the public, it must notify the person asking for the information within 10 days whether his request will be answered, and if not, the reason for the refusal. The citizen may then appeal to the head of that agency, and a reply must be forthcoming in 20 days.

We also want to correct a time element that is unfair. If a citizen sues to get access to Government records, under present law his attorney must respond to Government motions within 20 days. The Government, however, is given 60 days to reply to motions by the other side. Our bill would amend the law to put both sides on equal footing, with a 20-day limit for replying.

A recent Supreme Court decision has left a citizen with no place to turn if an agency classifies material which the citizen believes should be nonclassified. At present, courts can only determine if the mechanics of the law and Executive orders were faithfully followed in classifying a document. Our amendment would give the courts the authority to examine a document in camera to determine if the information in dispute actually falls within the criteria of an Executive order.

The Federal Government has sometimes gone to great expense of litigation to deny citizen access to requested information.

On at least one or two occasions, Government officials have displayed an attitude that could be interpreted as saying to a citizen, "If you want this information, sue the Government." To make Federal officials think twice about engaging in litigation when the Government does not have a strong case, our bill would provide that the Federal Government may pay "reasonable attorney fees and other litigation costs" of citizens who win cases under the Freedom of Information Act.

One of the most beneficial amendments being proposed to this law, in my opinion, is one requiring annual reports to Congress. Each agency shall tell Congress each year how many times it has determined not to comply with requests for records, how many appeals there have been, the results of the appeals, a copy of each rule made regarding the Freedom of Information Act, and a copy of the fee schedule and the fees collected for making records available. Through these reports, we will be able to determine which agencies are responsive to the public and which are not.

I salute the gentleman from Pennsylvania (Mr. Moorhead), the chairman of the Foreign Operations and Government Information Subcommittee, and the gentleman from Illinois (Mr. Erlenborn), the ranking minority member of the subcommittee. They have carefully written amendments to the Freedom of Information Act worthy of your approval. It was a pleasure to be associated with them in producing this legislation. I urge its adoption.

Mr. ERLENBORN. I now yield to the gentleman from Virginia (Mr. Parris).

Mr. PARRIS. Mr. Chairman, I should like to pursue the response the gentleman made a moment ago to the inquiries from the gentleman from Florida (Mr. Young). Did I understand the gentleman to say that in an in camera inspection by the court of information that the

gentleman assumes hypothetically, for the purposes of this colloquy, has to do with national security, that the court in this legislation would look to the provisions of the Executive order that classifies that material under the national security exemption rather than to the material itself?

Mr. ERLENBORN. No. I am afraid the gentleman misunderstands. The amendment that we have on the bill says that the material must be classified under criteria established by the Executive order, and this is the authority for classifying the material. The court will look at the material and see whether or not it properly falls within the area established by the Executive order for classification, if it fits the criteria of the Executive order, so the court would be looking to the material itself.

Mr. PARRIS. If the gentleman would yield further, let us perhaps try to draw an analogy here where some individual wants to determine some information from the Department of Defense, and the Department of Defense comes back and says under this statute, if it is law, that this particular material has some sensitive national security aspects to it. Would it then presumably not deliver that material, and the process would go on, and there would be an inspection in camera, a judicial proceeding?

Mr. ERLENBORN. Might I interrupt the gentleman at that point? Once there has been a refusal, the matter is moot unless the party seeking the information takes the next affirmative step of instituting suit.

Mr. PARRIS. I understand, and I have gone by that step. That material that has been determined by the appropriate Government agency or Government official within the Department of Defense would then presumably be delivered or made in some way available to the court for examination, so that the court itself would review the documents, or whatever the case may be, and determine that that was in fact sensitive national security information.

Mr. ERLENBORN. The court could. The court would not be required to. We say that the court may inspect in camera. That is one device that would be made available to the court. The court is not required to. Mr. PARRIS. Would it not be a reasonable presumption that if the court is going to make an intelligent decision about the sensitivity, it is going to have to look at the material?

Mr. ERLENBORN. Not necessarily. It may be that the description of the document itself would be sufficient. If someone were asking for instance, for the plans for a new weapons system, or something like that, it would be quite apparent on the face of the request that this material is properly classified.

Mr. McCLOSKEY. Mr. Chairman, would the gentleman yield for a supplement to that response?

Mr. ERLENBORN. I yield to the gentleman from California.

Mr. McCLOSKEY. I thank the gentleman for yielding.

Again, we examined this matter against the *Sirica* case decision. There the Court of Appeals ruled that if the President offered a statement to the court as to the reasons why the documents were being withheld, the court would hear arguments on those issues, and only if the arguments were not satisfactory to the court would the court then order that the documents be produced for in camera

inspection. Using this authorization under criteria established by the Executive order, if that circuit court decision which remains law is followed, we would assume that the court would not order the production of the documents unless the arguments as to the documents themselves were not persuasive.

And the executive branch under the Executive order, having the power to classify matters as "Top Secret," "Secret," or "Confidential," we would assume the court would apply very strict rules before applying the in camera examination of the documents themselves.

Mr. WRIGHT. Mr. Chairman, will the gentleman yield?

Mr. ERLÉNBOEN. I yield to the gentleman from Texas.

Mr. WRIGHT. Mr. Chairman, I thank the gentleman from Illinois for yielding, and I congratulate the gentleman in the well for his leadership as well as that shown by the chairman of our subcommittee, the gentleman from Pennsylvania (Mr. Moorhead) for bringing a very well-constructed and very well-balanced piece of legislation before the House.

It is necessary, I think, to point out that most of the changes which this bill would make in existing law are procedural in nature but they are of considerable significance in the administration.

Mr. TRÉEN. Mr. Chairman, will the gentleman yield?

Mr. ERLÉNBOEN. I yield to the gentleman from Louisiana.

Mr. TRÉEN. Mr. Chairman, regarding the national defense issue which the gentleman from Florida and the gentleman from Virginia have talked about, do I understand that the in-camera review by the judge would be solely for the purpose of determining whether the material had been classified consistent with the criteria or does the judge have the right to question the criteria? Before responding I would appreciate it if the gentleman will direct his attention to the language in the bill which says:

Authorized under criteria established by an Executive order to be kept secret in the interest of the national defense or foreign policy.

My question is whether or not the judge can question whether those criteria were established in the interest of the national defense or foreign policy.

Mr. ERLÉNBOEN. I have no hesitation in answering the gentleman that the court would not have the right to review the criteria. The court would only review the material to see if it conformed with the criteria. The description "in the interest of the national defense or foreign policy" is descriptive of the area that the criteria have been established in but does not give the court the power to review the criteria.

Mr. TRÉEN. I thank the gentleman.

If the gentleman will yield further, does the chairman of the subcommittee concur in that interpretation, that the criteria themselves may not be reviewed?

Mr. MOORHEAD of Pennsylvania. If the gentleman will yield, the court must accept the language of the Executive order as it was written.

Let me say to the gentleman what we were concerned about is a statement in the Supreme Court construing the Freedom of Information Act. Justice Potter Stewart said:

Instead the Congress has built into the Freedom of Information Act an exemption that provides no means to question an Executive decision to stamp a document "Secret" however cynical, myopic or even corrupt the decision might have been.

But it is that kind of thinking of the Court which we wanted to alter.

Mr. RAEBURA. Mr. Chairman, will the gentleman yield?

Mr. ERLÉNBOEN. I yield to the gentleman from Ohio.

Mr. RAEBURA. Mr. Chairman, I thank the gentleman for yielding. Information Act contained in H.R. 12471. These amendments will, in my estimation, improve the administration of the act by stimulating Federal agencies to disclose more Government information to the public and to disclose it more quickly.

When we think of the Freedom of Information Act and providing access to Government information, I know that most people think in terms of affording entry to material in the city of Washington. We often forget that the Federal Government has offices in communities all round the country, and that each of these offices also maintains information which is important to many citizens. As we decentralize Government further, we will have more of these offices, and they will maintain increasing amounts of important data.

The Freedom of Information Act applies to matters which are in these local Federal offices, as well as those which are at the seat of Government. Regrettably, many officials and employees at these offices are not familiar with the provisions of the act. Requests for information made to them must often be referred to Washington, and as a result are compiled with slowly, if at all. Public access to Government data is consequently frustrated not due to any malice or intent to deceive, but merely to ignorance of the law.

I sincerely hope that the various agencies covered by the Freedom of Information Act will take the occasion of congressional consideration of amendments to this law to educate their employees in general offices about it. Perhaps enactment of these amendments, with its consequent demands on agencies for increased speed and scope of disclosure, will effectively require agencies to make their employees outside this city aware of the FOI law.

However greater responsiveness of Federal offices to the people they serve can be achieved, I shall be happy to see it occur. I view H.R. 12471 as a means of accomplishing that goal. For that reason, as well as those cited by previous speakers, I support the bill.

Mr. Chairman, one further matter that we may look at is that these agencies are located not just in Washington, but also around the country, and these agencies ought to be accessible to the public, as well as those agencies in Washington. I think this is an important dimension of the bill.

(Mr. Regula asked and was given permission to revise and extend his remarks.)

Mr. ERLÉNBOEN. I thank the gentleman from Ohio.

(Mr. Wright asked and was given permission to revise and extend his remarks.)

Mr. WRIGHT. Mr. Chairman, our committee has worked long and hard to produce H.R. 12471 as a genuinely bipartisan measure to

strengthened and to improve the operation of the Freedom of Information Act. A total of 19 days of investigative and legislative hearings were held on the act in 1972 and 1973 by our Foreign Operations and Government Information Subcommittee, under the chairmanship of the gentleman from Pennsylvania (Mr. Moorhead). Another 9 days of open markup sessions were held by the subcommittee during the past months to revise, improve, and refine the language of these amendments so that we could have unanimous agreement by our subcommittee and full committee members—both Republicans and Democrats.

Mr. Chairman, the freedom of information issue—dramatized so effectively by the gentleman from California (Mr. Moss) during his 16 years as chairman of this subcommittee—has never been a partisan one. The committee has been diligent in advancing and protecting the public's "right to know" during the past four administrations—two Republican and two Democratic. We have fought the Government bureaucrat's penchant for secrecy for almost 20 years in our committee and have saved the American taxpayers untold millions of dollars in the process.

The amendments to the Freedom of Information Act of 1966 that are proposed in H.R. 12471 are the first to be considered since its enactment. This is a highly technical and complex subject, and the committee has been exceedingly careful and deliberate in the amending process. Some may feel that we have not gone far enough. For example, 552(b) of the act is changed at all. We felt that, by and large, the Federal courts were doing a creditable job in interpreting the language of most exemptions in a way consistent with the original intent of the Congress. The clear trend in case law under the Freedom of Information Act has been tilted toward the public's "right to know" and against Government bureaucratic secrecy, and that is the way it should be.

Although most of the amendments to the law proposed by H.R. 12471 are procedural in nature, they are nonetheless of significant importance in improving the day-to-day administration of the act. As examples, I call attention to the specific time limits provided in this bill for an agency's response to a request for information from the public. Also, the requirement that indexes of certain types of information 'be published and distributed by sale or otherwise' by each Federal agency and the discretionary authority given the courts to award attorney fees and costs to plaintiffs who prevail against the Government in freedom of information litigation. Amendments relating to the court review provisions of the act likewise reaffirm the original intent of Congress in the definition of the term "de novo"; they also confirm our support of discretionary use by the courts of in-camera review of contested records to clearly determine if they are properly withheld under the criteria of the exemptions set forth in section 552(b) of the present law.

This is a meaningful and important bill, Mr. Chairman, and one which deserves the support of every Member of this body. By passing H.R. 12471 with an overwhelming vote we may begin to repair the grave erosion of public confidence in our governmental institutions that has resulted from recent Watergate scandals, secrecy, and coverup.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I yield 5 minutes to the original author of the Freedom of Information Act, the gentleman from California (Mr. Moss.)

(Mr. Moss asked and was given permission to revise and extend his remarks.)

Mr. MOSS. Mr. Chairman, 8 years ago when the Congress passed the Freedom of Information Act without a single dissenting vote, I thought we had made it abundantly clear that the courts would have the power to examine classified documents in camera and determine whether they had been properly classified.

The criteria for each classification—confidential, secret, and top secret—had been set forth clearly in an Executive order by the President. Either a classified document meets the test of the criteria or it does not. It is just that simple.

It does not require an Einstein. What it does require is some intelligence, sensitivity, commonsense, and an appreciation for the right of the people to know what their Government is doing and why. I have confidence our judges have these qualities.

I do not think we have to make dummies out of them by insisting they accept without question an affidavit from some bureaucrat—eager to protect his decisions whether they be good or bad—that a particular document was properly classified and should remain secret. No bureaucrat is going to admit he might have made a mistake.

If that sounds partisan or too severe a criticism, I would like to quote directly from a statement of the President of the United States only 2 years ago. He said:

Unfortunately, the system of classification which has evolved in the United States has failed to meet the standards of an open and democratic society, allowing too many papers to be classified for too long a time. The controls which have been imposed on classification authority have proved unworkable, and classification has frequently served to conceal bureaucratic mistakes or to prevent embarrassment to officials and administrations.

The many abuses of the security system can no longer be tolerated. Fundamental to our way of life is the belief that when information which properly belongs to the public is systematically withheld by those in power, the people soon become totally incapable of determining their own destinies.

Although the present Freedom of Information Act requires de novo determination of agency actions by the Federal courts, the Supreme Court has problems to the extent which courts may engage in in-camera inspection of withheld records.

A recent Supreme Court decision held that under the present language of the act, the content of documents withheld under section 552(b)(1)—pertaining to national defense or foreign policy information—is not reviewable by the courts under the de novo requirement in section 552(a)(3). The Court decided that the limit of judicial inquiry is the determination whether or not the information was, in fact, marked with a classification under specific requirements of an Executive order, and that this determination was satisfied by an affidavit from the agency controlling the information. In-camera inspection of the documents by the Court to determine if the information actually falls within the criteria of the Executive order was specifically rejected by the Court in its interpretation of section 552(b)(1) of the act. However, in his concurring opinion in the Mink case, Mr. Justice Stewart invited Congress to clarify its intent in this regard.

Two amendments to the act included in this bill are aimed at increasing the authority of the courts to engage in a full review of agency action with respect to information classified by the Department of Defense, the Department of State, and other agencies under Executive order authority.

Mr. Chairman, it is the intent of the committee that the Federal courts be free to employ whatever means they find necessary to discharge their responsibilities. This was also the intent in 1966 when Congress acted, but these two amendments contained in the bill before you today make it crystal clear. I ask for your unanimous support for this legislation which is intended to close such loopholes and make the right to know more meaningful to the American people.

I would like to point out, Mr. Chairman, too, I know the concern expressed by at least two Members in the questions directed to the distinguished ranking minority member of the committee, the gentleman from Illinois (Mr. Erlenborn), that the classifications of many of these documents are made at such low levels in the bureaucracy of Government that one would be almost shocked to even find out that they had the authority to impose a classification stamp.

We found at one time that classification authority was being exercised by over 2 million persons in the Federal bureaucracy. Many of those documents were classified with little understanding on the part of the classifiers and remain hidden from public view. Many of those documents could be the subject of action proposed to be taken in court under the provisions of the language now being amended to further clarify the Freedom of Information Act. I think the amendments are most worthwhile.

Mr. Chairman, before yielding the floor, I would like to address a question to the gentleman from Pennsylvania (Mr. Moonhead), regarding the report language on page 9 under the subheading, "Information to Congress."

As I understand it, I think it is of the utmost importance that in no way do we modify the rights of the Congress by any of the language contained in the amendments now pending before this committee.

Mr. MOONHEAD of Pennsylvania. Mr. Chairman, will the gentleman yield?

Mr. MOSS. Mr. Chairman, I yield to the gentleman from Pennsylvania.

Mr. MOONHEAD of Pennsylvania. Mr. Chairman, as is the usual case, the gentleman from California is 100 percent correct.

Mr. MOSS. Mr. Chairman, I thank the gentleman.

Mrs. MINK. Mr. Chairman, will the gentleman yield?

Mr. MOSS. Mr. Chairman, I yield to the gentleman from Hawaii. (Mrs. Mink asked and was given permission to revise and extend her remarks.)

Mrs. MINK. Mr. Chairman, I would like to join the gentleman in the well in expressing my very genuine support for this legislation, and commend not only the gentleman in the well, but the chairman of the subcommittee and the members of this committee for bringing forth this legislation which will correct two major defects in the Court's decision as was rendered in the Mink against EPA case.

Mr. Chairman, I rise in support of H.R. 12471, legislation to amend the Freedom of Information Act.

As Congress moves to reform our election laws, it is also essential that we move forward on another front to bring Government closer to the people. This is in the area of governmental information, the free flow of which is the wellspring of our constitutional democracy.

Fortunately, we have an excellent vehicle for this. The Freedom of Information Act, first enacted in 1966, provides a tested and workable mechanism for assuring the disclosure of information to the public while at the same time protecting the confidentiality of the Government process where necessary.

Acting on the experience gained under the basic statute, we can refine and improve the act as needed. H.R. 12471 is an effort to do this. It is a carefully considered and drafted bill which was reported out unanimously by the members of the Committee on Government Operations. It makes spare and judicious changes in the act, the need for which has been fully demonstrated by events in the information area.

I would like to discuss one such change in particular, as I was a participant in the events which showed the act must be clarified. On January 22, 1973, the U.S. Supreme Court rendered its decision in the case of Environmental Protection Agency against Mink, et al. This was the first interpretation of the Freedom of Information Act by the Supreme Court. I had initiated the suit a year earlier with 32 other Members of Congress as plaintiffs. We sought as Members of Congress and as private individuals to compel the executive branch to release papers on the nuclear test "Canmkin." At the time, Congress was making a decision on whether to authorize and appropriate funds for the test.

In our suit, we asked that the judicial branch rule on the Executive's compliance with provisions of the act. We secured an Appeals Court directive to the Federal district judge to review the documents in camera to determine which, if any, should be released. This seemed entirely proper to us as an initial step under the act, since the act does provide for court determination under section (a)(3) on a de novo basis of the validity of Executive withholdings.

Unfortunately, in the Mink case the Supreme Court reached a decision that most of us regard as somewhat tortuous in this regard. When the executive branch took the Appeals Court decision in this regard. When court on certiorari, the Supreme Court held that in camera reviews of material classified by the President as national defense and foreign policy matters are not authorized or permitted by the act.

The basis of this decision was the act's list of exemptions from compelled disclosure. Exemption No. 1, under section (b)(1) of the act, exempts matters authorized by specific Executive order to be kept secret in the interest of the national defense or foreign policy. Somehow, the Supreme Court decided that once the Executive had shown that documents were so classified, the judiciary could not intrude. Thus, the mere rubberstamping of a document as "Secret" or "Confidential" could forever immunize it from disclosure. All the Court could do was to determine whether it was so stamped. An affidavit was used in the Mink case to prove this. No judge ever saw the documents at all, not even their cover page.

The abuses inherent in such a system of unrestrained secrecy are obvious. As the system has operated, there is no specific Executive

order for each classified document. Instead, the President issued one single Executive order establishing the entire classification system, and all of the millions of documents stamped "Secret," under this over succeeding years are now forever immune from even the most superficial judicial scrutiny. A lower-level bureaucrat could stamp the Manhattan telephone directory "Top Secret" and no court could order this changed. Under the Supreme Court edict, the Executive need only dispatch an affidavit signed by some lowly official certifying that the directory was classified pursuant to the Executive order, and no action could be taken.

Obviously, something must be done to correct this ridiculous court interpretation. It need not be a drastic step. Actually, it was the original intention of Congress in adopting the Freedom of Information Act to increase the disclosure of information. Congress authorized de novo probes by the judiciary as a check on arbitrary withholding actions by the Executive. Typically, the de novo process involves in camera inspections. These have been done by lower courts in the case of materials withheld under other exemptions in the act. They can be barred under exemption No. 1, only through a misguided reading of the act and by ignoring the wrongful consequences.

H.R. 12471 contains two minor changes in the act to correct this aspect of the Mink decision and make crystal clear that courts have authority to make in camera inspections of original documents, no matter under what exemption they were withheld, to assure compliance with the Freedom of Information Act.

The first change inserts the words "and may examine the contents of any agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth" in the act. This change will remove all doubt that courts have discretionary authority to utilize in camera inspections when they believe it is desirable. It does not compel such actions but leaves it to the discretion of the court.

The other change brought about by the Mink decision revises the wording of exemption No. 1. Instead of referring merely to matters specifically required by Executive order to be kept secret, it will exempt matters "authorized under criteria established by an Executive order to be kept secret. This will give courts leeway to probe into the justification of the classification itself. The change will empower courts to determine whether the matters meet the criteria established by the Executive order under which they were withheld. In effect, courts will be able to rule on whether disclosure actually would bring about damage to the national security or on whatever other test is set forth in the Executive order as justification for the classification. Our intention in making this change is to place a judicial check on arbitrary actions by the Executive to withhold information that might be embarrassing, politically sensitive, or otherwise concealed for improper reasons rather than truly vital to national defense or foreign policy. We are not saying any material must be released, only that it must be submitted to an impartial judge to determine whether its withholding meets the provisions and purposes of the act.

I believe these changes are essential if we are to restore the proper functioning of our democratic process. I ask for approval of H.R. 12471.

Finally in closing, I would like to acknowledge the Members of Congress in 1971, who joined me in my suit against the Government, which led to the Mink against EPA decision. The Members of Congress who were coplaintiffs are:

LIST OF COPLAINTIFFS

(Senator) James Abourezk, Bella S. Abzug, Herman Badillo, (the late) Nick Begich, Phillip Burton, William Clay, (former Rep.) John G. Dow, Robert F. Drinan, Bob Eckhardt, Don Edwards, William D. Ford, Donald M. Fraser, Michael Harrington, Augustus F. Hawkins, Ken Hechler, James J. Howard, Robert W. Kastenmeier, Edward I. Koch, Robert L. Leggett, Spark M. Matsunaga, Romano L. Mazzoli (former Rep.) Abner J. Mikva, Parren J. Mitchell, John E. Moss, Thomas M. Roes, Teno Ronneallo, Benjamin S. Rosenthal, John F. Roybal, (the late) William F. Ryan, (former Rep.) James H. Scheuer, John F. Seiberling, Frank Thompson, Jr.

The CHAIRMAN. The time of the gentleman from California has again expired.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I yield 1 additional minute to the gentleman from California. (Mr. Moss).

Mrs. MINK. Mr. Chairman, this has been a very long struggle for many of us, including the gentleman in the well, in the case we brought against the Government for the disclosure of information which we felt was so essential in our deliberations. The actions of this committee today in bringing this bill to the House will serve to enlarge not only our ability but the ability of the American people to acquire important information so that we can fully participate in this democracy.

Mr. CHAIRMAN, I thank the gentleman again, together with the chairman and members of the committee.

Mr. MOSS. Mr. Chairman, I thank the gentlewoman, and I would like to take this opportunity to express to the gentleman from Pennsylvania (Mr. Moorhead) and the gentleman from Illinois (Mr. Erlenborn) my unqualified admiration for the work they did in drafting these amendments.

Mr. CHAIRMAN, I am pleased to support them in offering the amendments to the House today.

Mr. ERLBORN. Mr. Chairman, I yield 4 minutes to the gentleman from Ohio (Mr. Brown).

(Mr. Brown of Ohio asked and was given permission to revise and extend his remarks.)

Mr. BROWN of Ohio. Mr. Chairman, I support the laudable objectives of the Freedom of Information Act, and the worthy attempt that the committee is making to strengthen the act and clarify certain ambiguities that still plague the act. But the House should make clear that the Corporation for Public Broadcasting is not intended to be covered within the expanded definition of "agency" which is part of this amendment. The corporation clearly is not a Government corporation or a Government-controlled corporation and should not become subject to the act under those terms as used within the expanded definition of "agency" in the amendment.

The Public Broadcasting Act of 1967 expressly provided that the corporation is not to be "an agency or establishment of the U.S. Government." Rather it is a private, independent corporation incorporated pursuant to the District of Columbia Nonprofit Corporation Act. Although Congress was desirous of supporting public broadcasting

with Federal funds in 1967, it was keenly aware that it would be inappropriate—constitutionally and otherwise—for the Government itself to perform the support activities that it envisioned for the corporation. Congress established a private corporation so that the Government itself would not be involved in deciding how the Federal funds appropriated for the support of public broadcasting would be used.

Of course, the corporation is not opposed to making available to the public information concerning its activities. Indeed, it is important that the public understand what the corporation does for it to succeed in its mission. But it would be a mistake to treat the corporation as a Government agency or Government-controlled corporation when its very reason for being is insulation from the Government. If the corporation is made subject to the act, the corporation will inevitably be clothed with the trappings of Government.

So, Mr. Chairman, I rise to inquire of both the chairman of the subcommittee, the gentleman from Pennsylvania (Mr. Moorhead), and the ranking member, the gentleman from Illinois (Mr. Erlenborn) if, under the language on page 8, the definition of "agency," in reference to the Corporation for Public Broadcasting, is not inconsistent with the language of the legislation and if, in fact, there is any effort to get control of the corporation or its decisionmaking function through this act. I would certainly hope not.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, will the gentleman yield?

Mr. BROWN of Ohio. I yield to the gentleman from Pennsylvania. Mr. MOORHEAD of Pennsylvania. Mr. Chairman, as I stated earlier in the debate, the language of the statute, where it says, "Government-controlled corporation," would be controlling over the language of the report. If the Corporation for Public Broadcasting is not a Government-controlled corporation, then the provisions of the act would not reach it.

I will say to the gentleman that if the act does apply to the corporation, there is no intention to do anything but give individual members of the public the right to get information. I am sure that this corporation would give that to the individual citizens, either with the law or without the law.

There is no intent to institute Government control or congressional control over the corporation itself.

Mr. BROWN of Ohio. Mr. Chairman, I thank the gentleman for his response.

The gentleman from Illinois (Mr. Erlenborn) will concur, I trust. Mr. ERLENBORN. Mr. Chairman, if the gentleman will yield, I will state that the gentleman is correct.

Mr. GUDE. Mr. Chairman, will the gentleman yield?

Mr. BROWN of Ohio. Mr. Chairman, I yield to the gentleman from Maryland.

(Mr. Gude asked and was given permission to revise and extend his remarks.)

Mr. GUDE. Mr. Chairman, the people's right to know is fundamental in our democracy. H. R. 12471 advances that right by making improvements in administrative procedures under the Freedom of Information Act. As a member of the subcommittee which considered this bill, I wish to add my support of it.

I would like to address myself to two provisions of H. R. 12471 in particular: Section (1)(d), which permits—but does not require—courts to examine the contents of agency records in camera to determine whether the records or any portion of them may be withheld from the public under any of the exemptions to the act, and section (2), which makes clear that only documents which may be kept secret in the interest of the national defense or foreign policy are those which have been properly classified.

Just before we began our hearings on two bills to amend the Freedom of Information Act, both of which I cosponsored, the Supreme Court ruled in *Environmental Protection Agency v. Mink*, 410 U.S. 73 (1973), that courts could not review the contents of classified documents. It decided that a determination of whether material was properly classified was satisfied by an affidavit from the agency controlling the information.

On the basis of personal experience, Mr. Chairman, I do not believe that this decision is reasonable. Let me cite one example. Weather modification in Vietnam during American participation in the war there is a subject in which I have had considerable interest. Both Senator Cranston and I have asked the Defense Department for information about this subject repeatedly since 1971: we have been denied it each time. Senator Pell, who is the chairman of the Senate Subcommittee on Oceans and International Environment, has also asked for this information, and he, too, has been denied it.

Weather modification is one of the most sensitive and fascinating scientific topics being discussed today. Scores of meteorologists and environmentalists are very concerned about developments in this area. Surely Congress ought to know what the Defense Department is doing with regard to it before legislating on measures in this field, such as my House Resolution 329, expressing the sense of the House that the United States should seek prohibition of weather modification as a weapon of war.

I think that the Department erred in not releasing information on weather modification, but under the present law, I could not seek court review of the Department's position.

If H. R. 12471 were to be enacted, however, I could seek that court review. I could get a hearing by an independent arbiter on whether the executive branch had acted rightly in withholding information. I am pleased to vote for a bill which makes this improvement in the administration of the Freedom of Information Act.

(Mr. Alexander, at the request of Mr. Moorhead of Pennsylvania, to revise and extend his remarks at this point in the Record.)

Mr. ALEXANDER. Mr. Chairman, I rise in support of H. R. 12471, which is designed to strengthen the Freedom of Information Act. This legislation is another step in making certain that government is the servant of the people and not its master.

One provision is especially important in this regard. The bill provides for the recovery of attorney fees and costs at the discretion of the courts.

Why is this so important? For one thing, there has been altogether too much unnecessary litigation forced upon our citizens by Federal agencies that feel they own or have a proprietary interest in Government information—information that belongs to all of our people.

Citizens are sometimes compelled to spend thousands of dollars—money they can ill afford—simply to assert rights which Congress is attempting to implement under both the spirit and letter of the Constitution.

The Government has lost more than half of its Freedom of Information cases. That is not much of a track record. In fact, it is lousy. And guess who is stuck with the tab? The unfortunate citizen complainant and the taxpayers.

The committee feels that once the Government has to take full responsibility for litigating indefensible cases, it will think twice before going to the mark in the first instance.

Let me emphasize that the recovery of reasonable attorney fees and other litigation costs is at the discretion of the court. It may take into consideration those factors it considers consistent with the administration of justice.

These may include when the suit advances a strong congressional policy, the ability of the plaintiff to sustain such expenses without harmful sacrifice, the obstinance of the Government in pressing a weak case, the question of possible malice and any other factors considered important to the court.

The committee feels strongly that no plaintiff should be forced to suffer any possible irreparable damage because the Government failed to live up to the letter and spirit of the Freedom of Information Act. Only when this Nation's most threadbare citizen can stand before the full array of Government power and emerge victorious in every sense when his cause is just will the full promise of our system of government be realized. That promise must be guarded and brought to reality and that is our intention.

I ask this House to strike another blow for liberty and approve this legislation with resounding affirmation for its constitutional goals.

Mr. MOONHEAD of Pennsylvania. Mr. Chairman, I yield such time as he may consume to the gentleman from Florida (Mr. Fascell), a member of the committee.

Mr. FASCCELL. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, as one of the original charter members of the Moss subcommittee, appointed by the late Chairman Dawson in 1955 to investigate Government secrecy and withholding practices, I am particularly pleased to support the pending bill, H.R. 12471.

This measure would measurably improve and strengthen the original Freedom of Information Act, now in operation for almost 7 years. Our committee has spent many weeks of concentrated effort in investigative and legislative hearings and in public markup sessions to draft and perfect the legislation before us today. The need for these amendments has been fully documented in our 1972 investigative report—House Report 92-1418—and in our legislative report on this measure—House Report 93-876. I commend these two documents to all Members. They make a clear-cut case for these important amendments to curb Federal agency delays and other abuses in the administration of the act, to clarify and reaffirm original congressional intent, and to make the Freedom of Information Act a much more usable tool for the working press.

Mr. Chairman, the advantages of open public access to the workings of government have been clearly demonstrated in both the Federal

Freedom of Information Act and in my own State of Florida through the "sunshine law." One of the ways in which we can help reestablish public confidence in our governmental operations is by the quick enactment of these amendments to the Freedom of Information Act.

For the most part, the Federal courts have taken adequate notice of the importance of the act as a milestone enactment by Congress in preserving the fundamental right of all Americans to be informed about the business of their Government. The pending legislation, therefore, does not change the language of eight of the nine exemptions contained in section 552(b) of the act. One of the most eloquent statements by a Federal court in support of the principles of the act was made in the 1971 freedom of information case of *Sovcie* against David:

Congress passed the Freedom of Information Act in response to a persistent problem of legislators and citizens, the problem of obtaining adequate information to evaluate Federal programs and formulate wise policies. Congress recognized that the public cannot make intelligent decisions without such information, and that governmental institutions become unresponsive to public needs if knowledge of their activities is denied to the people and their representatives. The touchstone of any proceedings under the Act must be the clear legislative intent to assure public access to all government records whose disclosure would not significantly harm specific governmental interests. The policy of the act requires that the disclosure requirements be construed broadly, the exemptions narrowly.

Mr. Chairman, one historical reference is particularly important in understanding the need for these amendments. When hearings were held 9 years ago by the Moss subcommittee on legislation that finally was enacted as the Freedom of Information Act of 1966, every single witness from the Federal bureaucracy—then under a Democratic President—opposed the bill. They claimed that it would seriously hamper the functioning of Federal agencies and be ruinous to the decisionmaking process. Despite their opposition, the bill was unanimously passed by the Congress and President Johnson wisely signed it into law. Of course, no such calamitous result was forthcoming. The spectres never appeared. During the hearings on this current legislation to strengthen the freedom of information law, every single witness from the Federal bureaucracy—this time under a Republican President—has again opposed the bill, using the same types of discredited arguments heard 9 years ago. I trust that history will repeat itself and that Congress will again give its overwhelming approval to freedom of information legislation and that the present White House incumbent will likewise sign the bill into law.

Mr. Chairman, I urge our House colleagues to support the important bipartisan amendments to the Freedom of Information Act as contained in H.R. 12471.

Mr. Chairman, I would just simply like to add two points: One is that the original act, after long years of study and thousands of pages of testimony, has been in operation now for 7 years, and all of the cries that were raised at the time the original act was passed can be summed up probably in this fashion: That it was said that if we passed the Freedom of Information Act, it would bring the executive branch of Government to a grinding halt.

None of that, of course, has happened. The Freedom of Information Act has found its place in the legislative history and in the administration of our Government. It has been an extremely useful tool for our citizens, and it has helped build confidence in Government. Goodness knows, we need more of that.

So these amendments now are another long step toward clarifying the right of public access to Government information.

Mr. Chairman, I would just want to add this one thought: That none of the fears that have been expressed really materialized. I do not believe that any would materialize in the future as a result of these amendments or any other act that deals with this subject. I think it is too well ingrained now in our legislative history and in the operational history of this Government.

One point we should keep in mind is that members of the public and the rights of individual Congressmen are also covered under this act as members of the public, and I would like to ask the chairman of the committee, once again, in view of the long history on this point, that whatever rights accrue to Members of Congress under this act as Members of the body politic, this in no way is in derogation of other rights which may exist by reason of our responsibilities as Members of Congress and in no way diminishes or modifies those rights.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, the gentleman is entirely correct.

(Mr. FASCELL asked and was given permission to revise and extend his remarks.)

Mr. LEHMAN. Mr. Chairman, I rise in support of the Freedom of Information Act amendments, and urge the defeat of any weakening amendments.

Mr. Chairman, the people in the 13th District in Florida wonder why it takes over a month to receive even an interim reply from a Federal agency on a request for information. As a matter of fact, my staff often has the same problem.

The information stored in Government files is valuable stuff. And the people whose taxes paid for it should in most circumstances be able to get hold of information quickly. I am pleased to see that the committee has set time limits of ten working days for agency action on original requests.

The Freedom of Information Act amendments before us today are more of what we in Florida call "government in the sunshine." Government in the sunshine is letting the people see what it is that the Government is doing, and gives the people better access to the Government. Conversely, it also makes the Government more responsive to the people.

Mr. Chairman, I urge the support of my colleagues for this bill. Mr. HANRAHAN. Mr. Chairman, I was particularly proud of the recent action of the House of Representatives in passing H.R. 12471. This bill represents the first comprehensive attempt to expand and improve upon the Freedom of Information Act which became public law in 1966.

Never before in the history of America has the need for better access to governmental information by the people been so great. One of the major reasons so many Americans have lost faith in our form of government has been the persistent belief that ours is a government of the few which makes its decisions in secret. The whole purpose of the Freedom of Information Act was to open up governmental information to the scrutiny of the American people. By passing H.R. 12471, the House has acted decisively to make this important public law more effective and available for use by all Americans.

The following major improvements to the Freedom of Information Act are included in H.R. 12471:

First. A current index of agency policies and documents shall be promptly published and distributed to interested individuals by sale or otherwise;

Second. Requests for information must merely "reasonably describe" as opposed to "specifically identify" records in question;

Third. Nothing in this bill shall be construed to limit in any way congressional access to information;

Fourth. Time limits for each phase of agency response to informational requests are set up. Original requests must be acted upon within 10 days. Administrative appeals must be decided within 20 working days. Court proceedings may be initiated if these deadlines are not met;

Fifth. The court may reimburse an informational requester in cases where the agency denial is not upheld;

Sixth. The court may examine in secret any information denied to see if it falls into any category of excluded information;

Seventh. Information denied for security reasons must be specifically identified as such by the executive branch;

Eighth. Each agency must submit an annual report of its efforts to meet the requirements of this act including the number of denials, reasons for each and the amount and rate of fees; and

Ninth. All executive agencies and Government corporations, including the Executive Office of the President, are required to abide by this act.

As a Member of Congress who has taken a deep and abiding interest in the free flow of Government information, I feel the House has acted in the public interest by passing H.R. 12471. I sincerely hope this wise and farsighted measure will be speedily enacted into law.

Mr. PATTEN. Mr. Chairman, many years ago, Lord Acton wrote that—

Everything secret degenerates, even the administration of justice; nothing is safe that does not show it can bear discussion and publicity.

I have always believed that, for I am convinced that the public has the right to know what the Government is doing right—or wrong. That is why I was a cosponsor of the Freedom of Information Act of 1966. It always disturbed me to read or hear that some Federal departments or agencies conceal public information, instead of revealing it. Although the 1966 act has made more information available to the public, many improvements have to be made before Congress can really say it is furnishing the people with the information they deserve.

Therefore, once again, I have become a cosponsor of freedom of information legislation, because it contains provisions that help strengthen the present law. The new legislation not only strengthens procedural aspects, but also improves its administration, and expedites the handling of requests for information from Federal agencies, including reports to Congress that will show applications for information denied.

Mr. Chairman, I have, like Jefferson, "confidence in the people, cherish and consider them as the most honest and safe." After years in public life, my confidence in the people has grown, while my faith in some who govern has declined. Yet, I have hope and believe that one of the best ways of improving the low esteem in which Congress

is held by the public—only about 21 percent think we are doing a good job—is to pass a Freedom of Information Act that will provide people with the information they need about government. If government is right, it should be praised, and if it is wrong, it should be criticized. I urge my colleagues to vote for this bill, for it will not only strengthen the public's right-to-know, but also help restore some of the public confidence that Federal agencies and Congress have lost.

Mr. THOMPSON of New Jersey. Mr. Chairman, I rise in support of H.R. 12471 in order that the Freedom of Information Act might be strengthened and made a more workable tool by the news media and other Americans.

As a cosponsor of the original 1973 bill on which the Foreign Operations and Government Information Subcommittee held hearings, I have closely followed the markup sessions that produced this bipartisan measure before us today. I think it significant, Mr. Chairman, that there is a broad representation of the political spectrum of both sides of the aisle in support of this bill.

History has repeatedly shown that an obsession for secrecy in governmental institutions has been the handmaiden of repression, corruption, and dictatorial rule. Government secrecy for the purpose of hiding wrongdoing, inept leadership, or bureaucratic errors undermines and can eventually destroy our system of representative government. The confidence of the American public in governmental institutions must be restored if we, as a nation, are to emerge from the Watergate doldrums. This bill to make the Freedom of Information Act a more viable weapon in the fight against secrecy excesses of the entrenched Government bureaucracy is an important start in that direction.

Mr. Chairman, in that connection we should all heed the recent observations of former Chief Justice Earl Warren when he said:

It would be difficult to name a more efficient ally of corruption than secrecy. Corruption is never haunted to the world. In Government, it is invariably practiced through secrecy. . . . If anything is to be learned from our present difficulties, compendiously known as Watergate, it is that we must open our public affairs to public scrutiny on every level of Government. . . .

I urge that we begin today by an overwhelming vote in support of H.R. 12471, to let the American public know that we in Congress believe that freedom of information is the best antidote for the Watergate secrecy and coverup poison.

Mr. OBER. Mr. Chairman, I should like to commend the gentleman from Pennsylvania (Mr. Moorhead) and the Foreign Operations and Government Information Subcommittee which he chairs for doing a superb job of legislative oversight on the Freedom of Information Act. That painstaking and hard-hitting job of oversight in the 92d Congress led to the introduction last year of amendments to clarify and strengthen the act, which I was pleased to cosponsor. Subsequent legislative hearings helped shape the amendments that are before us now.

I think a strong case for these amendments has already been made. All I hope to do now is contribute one example of why congressional vigilance is necessary to assure that the Freedom of Information Act functions in the way Congress intended.

Last December 27 the Soil Conservation Service of the Department of Agriculture published regulations prescribing the policies, proce-

dures and authorizations governing the public availability of its materials and records under what it erroneously referred to as the "Public Information Act."

The SCS said it would make its records available with "reasonable promptness" for inspection or copying, except for certain kinds of records which it then listed. The SCS may have intended that its list reflect the act's list of certain categories of information that are exempt from mandatory disclosure, but the agency stumbled before it even got started.

Its very first category was:

Materials specifically required by Executive orders to be kept secret.

A much, much broader category than that specified by the act itself, which now reads:

To compound its error, the SCS did not invite public comment on its regulations, declaring blandly that—

Specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy.

No substantive basic policy or procedural changes have been made.

Of course, that allegation was nonsense.

I cite this example to show that Federal agencies still cannot yet be trusted to live up to the Freedom of Information Act on their own. We must monitor them constantly and continue to demand that they strive to comply with the law to the fullest. If we do not, the public will not have the access to government information that it is entitled to have under the law.

Mr. Chairman, I urge that these amendments to the Freedom of Information Act be passed as reported out by the Government Operations Committee.

Mr. BROOKFIELD. Mr. Chairman, I rise today in support of H.R. 12471, to amend the Freedom of Information Act. When this historic act was passed in 1966, the intent was to guarantee the right of the American people to know what their Government was doing by enabling them to obtain information and records from Federal agencies. It has been increasingly evident since then that the 1966 act lacks the strength necessary to make it effective in this area. Certain ambiguities and weaknesses have prevented it from achieving the results intended by its passage. We have the opportunity today to correct this situation and inject new life into the original act by passing H.R. 12471.

The basis of a sound democracy is an informed public. We pride ourselves on being a government that depends on the voices of all the people, not just a few. But for these voices to play an active part they must have access to knowledge. Otherwise, they are merely the voices of ignorance.

The access to Government information is a basic right of all the American people. As one of our greatest Presidents said, this is a government "of the people, by the people, and for the people." I urge all my colleagues to echo Abraham Lincoln's words today by voting favorably on H.R. 12471.

Mr. DRINAN. Mr. Chairman, the people's right to know how the Government is discharging its duties is essential to a democratic society. This is the basis of the Freedom of Information Act, and for the amendments to that act before us today.

One of the most important features of the legislation before us today is that it would create the machinery for continuous congressional oversight of the information practices of the Federal Government.

The underlying principle of the Freedom of Information Act is that of Congress performing its most essential role, acting as a check in balance on the growth of executive power. Indeed, Senator Stuart Symington, quoted in "The Pentagon Papers and the Public," Freedom of Information Center Report No. 0013—U. Mo. July 1971—gave an excellent example of the dangers of secrecy in Government when he stated that he "slowly, reluctantly, and from the unique vantage point of having been a Pentagon official and the only Member of Congress to sit on both the Foreign Relations and Armed Services Committees concluded that executive branch secrecy has now developed to a point where secret military actions often first create and then dominate foreign policy responses."

The bill before us today strengthens the Freedom of Information Act of 1966. It provides for a wider availability of agency indexes listing informational items. It permits access to records on the basis of a reasonable description of a particular document rather than requiring specific titles or file numbers as is presently the case in many agencies. The bill sets short time limits for agency responses to inquiries. It provides for recovery of attorneys' fees and court costs by plaintiffs.

The bill also permits in camera court review of classified documents for purposes of determining whether the documents were properly classified under executive authority. This key provision in effect reverses *Environmental Protection Agency et al. v. Patsy T. Mink et al.*, 410 U.S. 73 (1973), a suit in which I was one of 33 congressional party plaintiffs, by specifically allowing in camera inspection by the courts of all documents in dispute, including those which may relate to national defense and those which may fall into the category of inter- and intra-office memoranda. This provision reestablishes the original intent of this bill.

The purpose of this legislation is to facilitate access to information by the public. At a time when the deleterious effects of Government secrecy have never been in greater evidence, this legislation is most welcome.

Mr. Reuss, Mr. Chairman, I strongly support H.R. 12471. The Freedom of Information Act would be strengthened and improved after 7 years of operation.

The Government Operations Committee adopted a comprehensive report on the administration of the Freedom of Information Act in September 1972. It was the unanimous view of the membership of our committee, based on many weeks of hearings and investigations by the Foreign Operations and Government Information Subcommittee, that certain amendments were required to make the law truly effective.

Hearings held on legislation to implement this committee recommendation were held last year and produced supporting testimony and statements from a number of widely diverse organizations, including:

From the news media:
Creed Black, editor of the Philadelphia Inquirer;

Herbert Bruker, former editor of the Hartford Courant and former president of the American Society of Newspaper Editors;

J. R. Wiggins, former editor of the Washington Post, past president of the ASNE, now publisher of the Ellsworth, Maine, American;

Richard Smyser, editor of the Oak Ridge, Oak Ridge, Tenn., and vice president of the Associated Press Managing Editors;

Clark Mollenhoff, former Nixon White House counsel and now bureau chief of the Des Moines Register-Tribune;

Top Koop, Washington office director of the Radio-Television News Directors Association;

E. W. Lampton, president of the Ohio Newspaper Association;

Ted Serrill, executive vice president, National Newspaper Association;

Courtney R. Sheldon, chairman, Freedom of Information Committee, Sigma Delta Chi;

Shanford Smith, president, American Newspaper Publishers Association;

William H. Hornby, executive editor, the Denver Post and chairman, FOI Committee, American Society of Newspaper Editors; and

The Association of American Publishers, Inc.

From the legal profession:
John T. Miller, chairman, section of administrative law, American Bar Association;

Richard Noland, vice chairman, Committee on Access to Government Information, American Bar Association;

Stuart H. Johnson, Jr., chairman for Freedom of Information, Federal Bar Association;

John Shattuck, staff counsel, American Civil Liberties Union; and
Ronald Plesser, attorney, Center for the Study of Responsive Law;

Thomas M. Franck, law professor and director, Center for International Studies, New York University.

The measure is also supported by the American Library Association, Common Cause, and has been cosponsored in its various forms by more than 75 Members of the House and Senate.

H.R. 12471 contains needed and well-conceived amendments to the original 1966 Freedom of Information Act. While they may not solve all of the problems in its day-to-day administration resulting from foot-dragging tactics of the Federal bureaucracy, it will serve notice that Congress and the public strongly reaffirm its supports for the principles of the people's "right to know." As the late President Lyndon Johnson said when he signed the original measure into law:

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. * * * 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.

Mr. HARRINGTON. Mr. Chairman, in 1966 the Congress saw fit to enact Public Law 89-487—popularly recognized as the "Freedom of Information Act." This landmark legislation was structured to guarantee the rights of citizens to know the business of their Govern-

ment. But for all of its desirable ambitions, the Freedom of Information Act has, at times, proved incapable of assuring public access to the records of Federal agencies and departments.

Accordingly, the Committee on Government Operations of the House of Representatives has reported out legislation (H.R. 12471) to further protect the right of the public to check on the activities of the Federal Government, by improving the Freedom of Information Act.

During the summer of 1971, the Government Operations Subcommittee on Foreign Operations and Government Information undertook a comprehensive study of administration of the Freedom of Information Act by the Federal agencies. This investigation revealed widespread abuses of the act by the Federal agencies involved. By resorting to delaying tactics, various classification ploys and requiring of requestors a specificity of identification of desired information, Federal agencies were able, all too often, to successfully circumvent a multitude of the public's requests. The subcommittee, in its subsequent report, suggested a series of administrative changes to correct existing deficiencies in making information available by the Federal Government. Also set forth were a list of specific legislative objectives designed to improve the administration of the Freedom of Information Act. H.R. 12471, now before this House, is legislation that should correct those deficiencies noted by the subcommittee.

This measure, similar to H.R. 5425 which I sponsored in the previous session of the 93d Congress, seeks to accomplish more efficient, prompt, and full disclosure of information. H.R. 12471 would affect the following areas of the Freedom of Information Act:

H.R. 12471 would improve the availability of Federal agency indexes, which list the specific information available from individual agencies. The bill would require that indexes be readily available, in usable and concise form, upon request, even though agencies would not, by reasons of practicality, be required to print indexes in bound form.

Many agencies at present require an individual to designate a specific title or file number to identify desired documents. H.R. 12471 would allow for the retrieval of information with only a reasonable "description" of the requested information, thus restricting one manner in which citizens' access to information has been limited in the past.

Frequently, information from the Federal Government can be used only if it is timely. Too often, however, the intent of the Freedom of Information Act has been circumvented by dilatory tactics on the part of agencies. To deal with this problem, H.R. 12471 would set a 10-day time limit on agency responses to original requests for information, and 20 days for administrative appeals of denials. In unusual cases, good faith assurances of the agency will allow for an extension of the time period allowed. So as to expedite litigation carried out under the Freedom of Information Act, the bill would also cut to 20 days the present 60-day requirement for agency responses to complaints. The bill would also allow defendants to recover attorney's fees from the Government, as well as court costs, if the case goes against the Government.

An important expansion of the coverage of the act is also included in H.R. 12471, as the definition of what constitutes an "agency" is expanded. Government corporations, such as the Tennessee Valley Authority, and Government-controlled corporations, such as the Corporation for Public Broadcasting or Amtrak, would come under the authority of the Freedom of Information Act for the first time. Also, agencies within the executive branch, such as the Office of Management and Budget or the National Security Council, would be covered.

H.R. 12471 also contains a provision extremely significant in the light of recent controversies over the classification of Government documents. The bill would permit, at the option of the court, in camera court review of document classification. Courts would be enabled to review the actual classified documents, rather than the classification notices, as is often the case under existing law. Courts would be empowered to determine whether the classifications imposed upon documents by agencies were properly constituted. These new procedures, I hope, will reduce the appalling incidence of smokescreen "national security" defenses raised by the Government in Freedom of Information Act cases.

Mr. Chairman, this important legislation enhances and improves the original Freedom of Information Act. In a nation which claims with just pride that it is ruled "by the people," the accessibility of Government records to the populace is of great importance. The amendments proposed to the original act by H.R. 12471 would limit the abuses of the act by Federal agencies that have had a chilling effect on the ability of citizens to fulfill their right to know. Today the House has the opportunity to pass historic legislation building upon the foundation of the original 1966 Freedom of Information Act. We should not shrink from the task before us today; we should pass this bill. Mr. MOORHEAD of Pennsylvania. Mr. Chairman, I have no further requests for time.

The CHAIRMAN. All time having expired, the Clerk will read. The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. (a) The fourth sentence of section 552(a)(2) of title 5, United States Code, is amended by striking out "and made available for public inspection by copying" and inserting in lieu thereof " , promptly publish, and distribute (by sale or otherwise) copies of ."

(b) Section 552(a)(3) of title 5, United States Code, is amended by striking out stating the time, place, fees to the extent authorized by statute, and procedure to be followed," and inserting in lieu thereof the following: "upon any request for records which (A) reasonably describes such records, and (B) is made in accordance with published rules stating the time, place, fees to the extent authorized by statute, and procedure to be followed."

(c) Section 552(a) of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

(5) Each agency, upon receipt of any request for records made under this subsection, shall—

(A) determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the date of such receipt whether to comply with the request and shall immediately notify the person making the request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

"(B) make a determination with respect to such appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the date of receipt of such appeal.

"Any person making a request to an agency for records under this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with subparagraph (A) or (B) of this paragraph. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to the person making such request."

(d) The third sentence of section 553(a)(3) of title 5, United States Code, is amended by inserting immediately after "the court shall determine the matter de novo" the following: ", and may examine the contents of any agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b)."

(e) Section 552(a)(3) of title 5, United States Code, is amended by adding at the end thereof the following new sentence: "Notwithstanding any other provision of law, the United States or the officer or agency thereof against whom the complaint was filed shall serve a responsive pleading to any complaint made under this paragraph within twenty days after the service upon the United States attorney of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown. The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the United States or an officer or agency thereof, as litigant, has not prevailed."

Sec. 2. Section 552(b)(1) of title 5, United States Code, is amended to read as follows:

"(1) authorized under criteria established by an Executive order to be kept secret in the interest of the national defense or foreign policy";

Sec. 3. Section 552 of title 5, United States Code, is amended by adding at the end thereof the following new subsections:

"(d) On or before March 1 of each calendar year, each agency shall submit a report covering the preceding calendar year to the Committee on Government Operations of the House of Representatives and the Committee on Government Operations and the Committee on the Judiciary of the Senate. The report shall include—

"(1) the number of determinations made by such agency not to comply with requests for records made to such agency under subsection (a) and the reasons for such determination;

"(2) the number of appeals made by persons under subsection (a)(5)(B), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

"(3) a copy of every rule made by such agency regarding this section;

"(4) a copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section; and

"(5) such other information as indicates efforts to administer fully this section."

(6) Notwithstanding section 551(1) of this title, for purposes of this section, the term "agency" means any executive department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency."

Sec. 4. The amendments made by this Act shall take effect on the nineteenth day beginning after enactment of this Act.

Mr. MOORHEAD of Pennsylvania [during the reading]. Mr. Chairman, I ask unanimous consent that the bill be considered as read, printed in the Record, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The CHAIRMAN. Are there any amendments?

AMENDMENT OFFERED BY MR. WHITE

Mr. WHITE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. White: On page 4, lines 9 through 14, strike all of subsection (d) and insert the following in lieu thereof:

"(d) On or before March 1 of each calendar year, each agency shall submit a report covering the preceding calendar year to the Speaker of the House and the President of the Senate for referral to the appropriate committees of the Congress. The report shall include—"

(Mr. White asked and was given permission to revise and extend his remarks.)

Mr. WHITE. Mr. Chairman, my amendment to the Freedom of Information Act bill is designed to bring the bill in conformity with the rules of the House. I cite you on page 542, rule 40, entitled "Executive Communications":

Estimates of appropriations and all other communications from the executive departments, intended for the consideration of any committees of the House, shall be addressed to the Speaker, and be referred as provided by clause 2 of rule 24.

Clause 2 of rule 24 states:

Business of the Speaker's table shall be disposed of as follows:

Messages from the President shall be referred to the appropriate committees without debate. Reports and communications from the heads of departments, and other communications addressed to the House . . . may be referred to the appropriate committees in the same manner. . . .

Section 3 of the bill calls for submission of a report by each agency to the Government Operations Committees of the House and Senate and to the Senate Judiciary Committee. But, according to the House rules all such agency reports must first be directed to the Speaker of the House. Then the Speaker may refer them in accordance with rule 24, clause 2, to the appropriate committee. I understand the Senate has the same procedure.

If you desire to maintain order in the application of our rules to our bills, then my amendment should be adopted. Although my amendment may be a technical one, it is offered with the purpose of keeping the laws we make on submission of agency reports consistent with the rules we have made for ourselves.

Mr. MOORHEAD of Pennsylvania. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I am glad to yield to the chairman of the subcommittee. Mr. MOORHEAD of Pennsylvania. Mr. Chairman, the gentleman from Texas (Mr. White), has been kind enough to provide us with a copy of his amendment. Insofar as the members of the committee on this side are concerned, we would accept this amendment.

Mr. WHITE. I thank the gentleman.

Mr. ERLÉNBERG. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I am glad to yield to the gentleman from Illinois.

Mr. ERLÉNBERG. Might I call to the gentleman's attention what I consider to be a statement which perhaps is confusing in his amendment. It says "strike all of subsection (d) and insert the following in lieu thereof," and then the material referred to is inserted. That might be construed as striking out all of subsection (d) and insert the following in section. I know that is not the gentleman's intention.

Mr. WHITE. No. It is lines 9 through 14 that would be stricken by the wording of the amendment. That covers the areas that I am interested in.

Mr. ERLÉNBERG. Then it is clear that the gentleman only intends to strike the material in lines 9 through 14?

Mr. WHITE. Yes; according to the language of the amendment.

Mr. ERLÉNBOEN. I thank the gentleman.

Mr. CHAIRMAN, I see no objection to the language.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. White).

The amendment was agreed to.

The CHAIRMAN. Are there any further amendments? If not, under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. Eckhardt, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the bill (H. R. 12471) to amend section 552 of title 5, United States Code, known as the Freedom of Information Act, pursuant to House Resolution 977, he reported the bill back to the House with an amendment adopted in the Committee of the Whole.

The Speaker. Under the rule, the previous question is ordered.

The amendment was agreed to.

The Speaker.. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The Speaker. The question is on the passage of the bill.

The question was taken, and the Speaker announced that the ayes appeared to have it.

Mr. BUCHANAN. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The Speaker. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 383, nays 8, not voting 41, as follows:

[ROLL NO. 89]

Yeas—383

Abdnor
Abzug
Adams
Addabbo
Alexander
Anderson, Calif.
Anderson, N. C.
Andrews, N. Dak.
Archer
Ashbrook
Ashley
Aspin
Badillo
Batalis
Baker
Barrett
Bauman
Bell
Bennett
Bergland

Bevill
Biaggi
Bisler
Buchanan
Bingham
Blackburn
Blatnik
Boggs
Boland
Bolling
Bowen
Brademas
Bray
Breax
Breckinridge
Brinkley
Brooks
Brookfield
Brown, Calif.
Brown, Mich.
Brown, Ohio

Broyhill, N. C.
Broyhill, Va.
Buchanan
Burgener
Burke, Calif.
Burke, Fla.
Burke, Mass.
Burkison, Mo.
Burton
Butler
Byron
Camp
Carney, Ohio
Carter
Casey, Tex.
Cederberg
Chamberlain
Chappell
Chisholm
Clancy

Clark
Clausen, Don H.
Clawson, Del
Cleveland
Cochran
Cohen
Collins, Tex.
Conable
Conlan
Conte
Conyers
Cornan
Coughlin
Crane
Cronin
Culver
Daniel, Dan
Daniel, Robert
W., Jr.
Daniels
Daniels
Dominick V.
Danielson
Davis, Ga.
Davis, S. C.
Davis, Wis.
de la Garza
Delaney
Dellenback
Dellums
Denholm
Dennis
Dent
Derwinski
Devine
Diggs
Dingell
Donohue
Downing
Dripan
Dulski
Duncan
du Pont
Eckhardt
Edwards, Al.
Edwards, Calif.
Eilberg
Erlenboen
Esch
Eshleman
Evans, Colo.
Evyns, Tenn.
Fascell
Fendley
Fish
Fisher
Flood
Flowers
Flynt
Foley
Ford
Forsythe
Fountain
Fraser
Frelinghuysen
Frenzel

Frey
Froehlich
Fulton
Fuqua
Gaydos
Gettys
Gibbons
Gibbons
Gillman
Ginn
Goldwater
Gonzalez
Goughlin
Grasso
Green, Oreg.
Green, Pa.
Griffiths
Gross
Grover
Gubser
Gunter
Guyer
Haley
Hamilton
Hammer
Hammer
Hann
Hann
Hansrahan
Hansen, Idaho
Hansen, Wash.
Harrington
Harsba
Hastings
Hawkins
Hays
Hebert
Heckler, W. Va.
Heckler, Mass.
Heinz
Helstoski
Henderson
Hicks
Hillis
Hinshaw
Hogan
Hohfeld
Holt
Holzman
Horton
Howard
Huber
Hudnut
Hungate
Hunt
Hutchinson
Ichord
Jarnan
Johnson, Calif.
Johnson, Pa.
Jones, N. C.
Jones, Okla.
Jones, Tenn.
Jordan
Karrh
Kastenmeier

Kazen
Kemp
Ketchum
King
Koeh
Kuykendall
Kyros
Laegomarsino
Landrum
Latta
Leggett
Lehman
Lant
Lifton
Long, Ia.
Long, Md.
Lott
Luken
Lujan
McClary
McCloskey
McCullister
McCormack
McDade
McHall
McKinney
McSpadden
Macdonald
Madden
Madsen
Mahon
Mallary
Mann
Maraziti
Martin, Nebr.
Martin, N. C.
Mathias, Calif.
Mathus, Ga.
Matsunaga
Mayne
Mazzei
Meeds
Melder
Mezvinisky
Michel
Miford
Miller
Mills
Minish
Mink
Minshall, Ohio
Mitchell, Md.
Mitchell, N. Y.
Moakley
Molohan
Moorthead, Calif.
Moorthead, Pa.
Morgan
Mosher
Moss
Murphy, N. Y.
Murtha
Mvers
Natcher
Nedzi

Neisen
Nichols
Nix
O'Bev
O'Brien
O'Hara
O'Neill
Parris
Passman
Patten
Perkins
Petts
Peyser
Pike
Poage
Powell, Ohio
Preyer
Price, Ill.
Pritchard
Quie
Quillen
Rallsback
Randall
Rarick
Regula
Reuss
Reagle
Rinaldo
Roberts
Robinson, Va.
Rodino
Roe
Rogers
Roncalio, Wyo.
Roncallo, N.Y.
Rooney, Pa.
Rose
Rosenthal
Rostenkowski
Roush
Rousselot
Roy
Roybal
Ruppe

Ruth
Ryan
St Germain
Sandman
Sarasin
Sarbanes
Scherle
Schneebeil
Schroeder
Schubert
Seiberling
Shipley
Shoup
Shriver
Shuster
Sikes
Sisk
Skubitz
Slack
Smith, Iowa
Smith, N.Y.
Snyder
Spence
Staggens
Stanton, J. William
Stanton, James V.
Stark
Steed
Steele
Steelman
Steiger, Ariz.
Steiger, Wis.
Stephens
Stokes
Stratton
Stubblefield
Studds
Sullivan
Symington
Symms
Talcott
Taylor, Mo.
Taylor, N.C.
Thompson, N.J.

Nays—8

Beard
Burlison, Tex.
Dickinson

Hosmer
Landgrebe
Satterfield

Not voting—41

Anderson, Ill.
Annunzio
Arends
Armstrong
Brasco
Brozman
Carey, N.Y.
Clay
Collier
Collins, Ill.
Cotter
Dorn
Gray
Gude

Johnson, Colo.
Jones, Ala.
Kluczynski
McEwen
McKay
Metcalfe
Mizell
Montgomery
Murphy, Ill.
Owens
Patman
Pepper
Pickle
Podell

So the bill was passed.

The Clerk announced the following pairs:

Mr. Annunzio with Mr. Owens.
Mr. Rooney of New York with Mr. Pickle.
Mr. Cotter with Mr. Anderson of Illinois.
Mr. Rangel with Mr. Gude.
Mr. Brasco with Mr. Arends.
Mr. Gray with Mr. Mizell.
Mr. McKay with Mr. Brozman.
Mr. Podell with Mr. Price of Texas.
Mr. Metcalfe with Mr. Reid.
Mr. Teague with Mr. Montgomery.
Mr. Wolf with Mr. Armstrong.
Mr. Pepper with Mr. Rhodes.
Mr. Kluczynski with Mr. Johnson of Colorado.
Mr. Jones of Alabama with Mr. Collier.
Mr. Carey of New York with Mr. McEwen.
Mr. Clay with Mr. Rees.
Mrs. Collins of Illinois with Mr. Runnels.
Mr. Shuckey with Mr. Robison of New York.
Mr. Dorn with Mr. Young of Illinois.
Mr. Murphy of Illinois with Mr. Charles Wilson of Texas.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Thomson, Wis.
Thome
Thomton
Theman
Towell, Nev.
Treen
Udall
Ullman
Van Deerlin
Vander Jagt
Vander Veen
Yanik
Yeysey
Vigorito
Walde
Walsh
Wampler
Ware
Wampler
Whalen
White
Whitehurst
Whitten
Widhall
Wiggins
Williams
Wilson, Bob
Wilson, Charles H., Calif.
Winm
Wright
Wyatt
Wylder
Wylie
Wyman
Yates
Yatron
Young, Alaska
Young, Ga.
Young, S.C.
Young, Tex.
Zablocki
Zion
Zwisch

Waggoner
Young, Fla.

Price, Tex.
Rangel
Rees
Reid
Rhodes
Robison, N.Y.
Rooney, N.Y.
Runnels
Shuckey
Teague
Wilson, Charles, Tex.
Wolf
Young, Ill.