The original documents are located in Box 12, folder "Freedom of Information Act Amendments" of the Robert T. Hartmann Files at the Gerald R. Ford Presidential Library.

THE WHITE HOUSE
WASHINGTON

Oct. 16

Mr. Hartmann said he would personally call Ken Cole about the Freedom of Information memo.

(His position on this is the same as Timmons. RTH's position is not reflected in the memo and he doesn't know why. He would like to receive these things a little earlier so that his position could be included in the memo along with other staff members.)

RTH is going to take care of this.

Doug
7878

THE WHITE HOUSE

WASHINGTON

Nota -

Warren Hendricks came by + would like the Freedom of Information memo to RTH for him Ken Cole. Please call Hendricks office + someone will pick it up 6570

9.

RTH - This was given to Terry for the President just prior to his meeting yesterday afternoon (3:30pm, I believe)

sm

File

THE WHITE HOUSE

WASHINGTON

October 10, 1974

MEMORANDUM FOR: ROBERT HARTMANN

FROM: KEN COLE

SUBJECT: AMENDMENTS TO THE FREEDOM OF INFORMATION ACT

Attached is our memorandum on the Amendments to the Freedom of Information Act.

I realize that the politics on this one could be sensitive and would appreciate you taking a look at the memorandum prior to its going to the President.

Many thanks.

Why was this not staffed to me on the first go-around? I lack specifics, cannot comment. When is veto deadline? RH 10/16

Talked w Timmons agree w his position

Told Cole 10/16

THE WHITE HOUSE
WASHINGTON

Mr. H:

Ken Cole's office just called and said this is the original copy and they need the President to see it before the 3:30 p.m. meeting today.

Neta

Oct. 10

Gave to Doug O'Donnell

THE WHITE HOUSE

WASHINGTON

ACTION

October 9, 1974

MEMORANDUM FOR: THE PRESIDENT

FROM: KEN COLE

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

Background

The Conference bill passed the Senate by voice vote October 1 and the House on October 7 347 to 2. As previous discussions with your legal staff have indicated, the bill contains a severely objectionable provision providing for judicial review of document classification. There are also difficulties with a section permitting search and disclosure of law enforcement agency investigatory files.

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

Options

Since the legislation was received here yesterday, you have basically two options:

1. Sign the legislation. Recognize the political difficulties of opposing "Freedom of Information"; have a signing ceremony; and issue a signing

statement which reinforces your Administration's interpretations of the judicial review of classified documents provision and expresses your intention to seek resolution of the constitutional issue in the courts (Buchen).

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

   Your legal staff is currently wrestling with the propriety of your using the Pocket Veto because of the month-long recess. All vetos would, of course, have to be uniform, but this possibility might make this option more attractive.

Since either scenario involves Congressional participation, it is important to have your decision in time to be effectuated before Congress goes home.

Decision

_____	Option 1	Sign legislation	Buchen	
_____	Option 2	Veto legislation	Ash Timmons NSC CIA State Justice Defense	Marsh Burch

UP-020

(SDX)

CHICAGO (UPI) -- THE SOCIETY OF PROFESSIONAL JOURNALISTS, SIGMA DELTA CHI, FRIDAY STRONGLY CRITICIZED PRESIDENT FORD'S VETO OF LEGISLATION DESIGNED TO STRENGTHEN THE FREEDOM OF INFORMATION ACT.

"FOR A PRESIDENT WHO IS PUBLICLY COMMITTED TO A MORE OPEN AND HONEST ADMINISTRATION TO OPPOSE SIGNIFICANT REFORMS IN FREEDOM OF INFORMATION LEGISLATION IS BOTH STARTLING AND DISAPPOINTING," SAID RALPH OTWELL, CHICAGO SUN-TIMES MANAGING EDITOR AND NATIONAL PRESIDENT OF THE 27,000-MEMBER SOCIETY.

OTWELL SAID ACCESS TO INFORMATION AND EARLIER ENLIGHTENMENT OF THE PUBLIC WOULD HAVE "SPARED THE NATION PROLONGED CONFUSION AND TORMENT.... BUT PRESIDENT FORD'S VETO SUGGESTS THAT HIS ADMINISTRATION IS PURSUING A DISCREDITED POLICY OF COVER-UP AS USUAL."

THE NEW LEGISLATION -- 17 AMENDMENTS TO THE FREEDOM OF INFORMATION ACT PASSED IN 1966 -- PREVIOUSLY HAD BEEN APPROVED BY BOTH HOUSES OF CONGRESS.

ONE OF THE KEY AMENDMENTS WOULD REQUIRE JUDICIAL REVIEW OF FOREIGN POLICY AND DEFENSE INFORMATION BEFORE IT COULD BE WITHHELD.

IN VETOING THE AMENDMENTS, FORD THURSDAY SAID HE SOON WOULD OFFER HIS OWN PACKAGE OF LEGISLATION.

OTWELL SAID THE 230 MEMBER CHAPTERS OF THE NATIONAL JOURNALISTIC SOCIETY WOULD BE URGED TO CONTACT MEMBERS OF CONGRESS FROM THEIR AREAS IN HOPES OF MOBILIZING ENOUGH CONGRESSIONAL SUPPORT TO OVERRIDE THE PRESIDENT'S VETO.

UPI 10-19 10:02 AED

UP-020
(SDX)

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UPI 10-19 10:02 AED

THE WHITE HOUSE
WASHINGTON

From: Robert T. Hartmann

To: Paul Miltich

Date: 10/22 Time a.m. p.m.

per our phone conversation

RTH

THE WHITE HOUSE
WASHINGTON

10/22
2:58

Geoff Shepard said you requested this info for Mr. Hartmann.

sj

Draft never used

THE WHITE HOUSE

FACT SHEET

FREEDOM OF INFORMATION ACT AMENDMENTS

The President today signed into law the Freedom of Information Act Amendments, which will facilitate timely access by the public to documents within the Executive branch.

The President has publicly stated his commitment towards a more open Executive branch and has worked personally and closely with the Congress on this legislation.

The legislation will:

- set strict time limits for agencies to respond to requests for documents
- require courts to give accelerated consideration to litigation concerning requests for documents
- permit the award of attorney fees to those who are successful in court on gaining access to disputed documents

ACTION

THE WHITE HOUSE

WASHINGTON

October 16, 1974

MEMORANDUM FOR: THE PRESIDENT

FROM: KEN COLE

SUBJECT: FREEDOM OF INFORMATION ACT AMENDMENTS

The last day for action on H. R. 12471 is Saturday, October 19, 1974.

Background:

The Conference bill passed the Senate by voice vote October 1 and the House on October 7, 347 to 2. As your legal staff have indicated, the bill contains:

(1) a severely objectionable provision providing for judicial review of document classification (Tab I);

(2) overly strict administrative time limit provisions (Tab II); and,

(3) a section permitting search and disclosure of law enforcement agency investigatory files (Tab III).

A full description of the legislation with these three problem areas numbered in red is contained in the enrolled bill memorandum from OMB at Tab A.

Options:

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

2. Veto the legislation and simultaneously transmit with your proposed changes. This should be preceded by a discussion with the senior

THE WHITE HOUSE

WASHINGTON

October 24, 1974

MEMORANDUM FOR: RON NESSEN

FROM: JACK MARSH

For your information I received a call today from Mr. Roudebush, Administrator of the Veterans Administration, who called to advise that Mr. Bob Owens, an associate of columnist Jack Anderson, had been in touch with them concerning the Chase report on the Veterans Administration. Mr. Owens' phone message was that Anderson had all or part of the Chase report and they would begin running portions of it this coming Sunday.

Mr. Roudebush explained that he did not know how they could obtain a report because the Veterans Administration could account for all of their copies of the same. It occurred to me we might wish to examine the report in order to be able to explain the inquiries that are likely to occur.

cc: Ken Cole
Bob Hartmann
Don Rumsfeld

Phil Buchen
Bill Timmons

THE WHITE HOUSE
WASHINGTON

Date 10/24/74

TO: Robert Hartmann

FROM: WILLIAM TIMMONS

FOR YOUR INFORMATION ✓

FOR YOUR COMMENTS _____

FOR APPROPRIATE HANDLING _____

OTHER P may sign tomorrow. Follow up to freedom of Info veto.

THE WHITE HOUSE

WASHINGTON

Dear Mr. Speaker:

As promised in my Message returning H.R. 12471, the Freedom of Information Act amendments, to the Congress without my approval, I enclose three draft amendments to that bill which would eliminate the basis for my veto if adopted. Also enclosed is a summary and analysis explaining each of the proposed amendments.

I hope that the Congress will, upon its return on November 18, consider these amendments on an urgent basis. Enactment of H.R. 12471 with these modifications will produce truly significant and beneficial legislation.

Sincerely,

Honorable Carl Albert
Speaker of the
House of Representatives
Washington, D. C. 20515

Enclosures

THE WHITE HOUSE

WASHINGTON

Dear Mr. President:

As promised in my Message returning H.R. 12471, the Freedom of Information Act amendments, to the Congress without my approval, I enclose three draft amendments to that bill which would eliminate the basis for my veto if adopted. Also enclosed is a summary and analysis explaining each of the proposed amendments.

I hope that the Congress will, upon its return on November 18, consider these amendments on an urgent basis. Enactment of H.R. 12471 with these modifications will produce truly significant and beneficial legislation.

Sincerely,

Honorable James O. Eastland
President Pro Tempore
of the Senate
Washington, D. C. 20510

Enclosures

THE WHITE HOUSE

WASHINGTON

Dear Ted:

Because of our previous correspondence on the Freedom of Information Act Amendments (H.R. 12471) and your leadership in moving this legislation through Congress, I wanted you to have the enclosed amendments I have today submitted to the President Pro Tempore.

While I realize we have had our differences on this bill, I think they are few compared to the many compromises and the substantial agreements which have been worked out over the past several months. I ask your further help and cooperation in obtaining early consideration of these proposed amendments so that we may accomplish our common goal of producing viable freedom of information legislation before the close of the 93d Congress.

As before, Administration representatives are ready to meet with you and your staff at any time to help work out a final product.

Sincerely,

Honorable Edward M. Kennedy
United States Senate
Washington, D. C. 20510

Enclosures

THE WHITE HOUSE

WASHINGTON

Dear Bill:

Because of our previous correspondence on the Freedom of Information Act Amendments (H.R. 12471) and your leadership in moving this legislation through Congress, I wanted you to have the enclosed amendments I have today submitted to the Speaker.

While I realize we have had our differences on this bill, I think they are few compared to the many compromises and the substantial agreements which have been worked out over the past several months. I ask your further help and cooperation in obtaining early consideration of these proposed amendments so that we may accomplish our common goal of producing viable freedom of information legislation before the close of the 93d Congress.

As before, Administration representatives are ready to meet with you and your staff at any time to help work out a final product.

Sincerely,

Honorable William S. Moorhead
House of Representatives
Washington, D. C. 20515

Enclosures

Review of Classified Documents
Amendment to H.R. 12471

That Section 2(a) of H.R. 12471 be amended by adding at the end of proposed paragraph (1) contain therein the following:

"Provided: That for matters described in (A), above, a court has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records to the complainant unless it finds that there is a reasonable basis to support the classification pursuant to such Executive order. The court may examine such records in camera only if it is necessary, after consideration by the court of all other attendant material, in order to determine whether such classification is proper."

Review of Classified Documents

This amendment would, as did the provisions it replaces, permit a court to review documents classified by agencies in the interest of national defense or foreign policy and to insure the reasonableness of that classification. However, the proposed language would permit a court to review the document itself and to disclose the document only if there is no reasonable basis to support the classification. This amendment removes an unconstitutional arrangement in H.R. 12471 as vetoed whereby a highly sensitive document pertaining to our national defense would have to be disclosed even if the classification were reasonable. The new language simply provides that after a review of all the evidence pertaining to a classified document, including the document itself if necessary, the document may be disclosed unless there is a reasonable basis for the classification by the agency. The burden of proof remains upon the agency to sustain the reasonableness of the classification.

Time Limits and Costs
Amendment to H.R. 12471

That Section 1(c) of H.R. 12471 be amended by:

a. Substituting the word "thirty" for the word "ten" appearing in proposed paragraph (6)(A)(i) contained therein; and deleting the second sentence of proposed paragraph (6)(B), and substituting therefor the following sentence:

> "No such notices shall specify dates that would result in extensions with respect to a single request for more than fifteen working days."

b. Redesignating proposed paragraph (6)(C), paragraph (6)(D), and inserting as new paragraph (6)(C) the following:

> "(C) If the agency finds at any time before the filing of suit under subparagraph 552(a)(4)(B) above that the periods set forth in subparagraph (A) above and any extension available under subparagraph (B) above are insufficient, it may petition the United States District Court in the District of Columbia for such further extension or extensions as may be needed, setting forth with particularity the reasons therefor and with appropriate notification to the person making the request. The court shall grant such further extension or extensions

as are appropriate if it is persuaded that the agency has proceeded with due diligence in responding to the request and requires additional time in order to make its determinations properly."

That Section 1(b)(2) of H.R. 12471 be amended by deleting the period at the end of the second sentence of proposed paragraph (4)(A) contained therein and adding the following:

", except that the reasonable cost of reviewing and examining records may be charged where such cost is in excess of $100 for any request or related series of requests."

Time Limits and Costs

As vetoed, H.R. 12471 provides that following a request for documents an agency must determine whether to furnish the documents within ten days, and following an appeal from a determination to withhold documents, the agency is afforded twenty days to decide the appeal. In unusual circumstances an agency may obtain an additional ten days for either determination.

Time limits on agency action with regard to requested documents are important additions to the public's right to know of the operations of its Government, and several agencies have already voluntarily adopted time limits for their responses. Experience with these time limits indicates that the restrictions in H.R. 12471 are impracticable. Because of the large number of documents often requested, their decentralized location and the importance of other agency business it would often be impossible to comply with requests in the time allotted.

This amendment would provide thirty days for the initial determination and would provide an additional fifteen days in unusual circumstances. Furthermore, in exceptional circumstances, the agency would be authorized to seek additional time from a court if it could demonstrate due diligence in responding to a request. For particularly burdensome requests, an agency would also be permitted to charge for the cost of reviewing requested documents if such cost exceeded $100 for each request or each series of related requests. This provision would help to defray those unusual expenses in responding to requests for documents at a time when we are seeking to limit our Governmental expenditures. Furthermore, the additional time afforded agencies in responding to requests will lead to more responsive determinations and more efficient use of agency personnel and resources, while still providing for prompt agency response to requested documents.

Investigatory Records
Amendment to H.R. 12471

That Section 2(b) of H.R. 12471 be amended by adding after the word "that" in the second line of proposed paragraph (7) the phrase "there is a substantial possibility that"; by deleting the word "criminal" in the seventh line of proposed paragraph (7); and by adding at the end of that proposed paragraph the following sentence:

"Provided: That where the agency head, after considering the results of a preliminary examination of the files involved in the request, personally finds, in light of (1) the number of documents covered by the request, (2) the proportion of such documents which consist of reports by Federal or State investigative agents or from confidential sources, and (3) the availability of personnel of the type needed to make the required review and examination, that application of the foregoing tests on a record-by-record basis would be impracticable, the agency may apply such tests to the investigatory file as a whole or to reasonably segregable portions thereof; except that this provision shall not be applied to files which

the agency has reason to believe contain records which are not investigatory records compiled for law enforcement purposes, nor shall it protect from disclosure any records which, as a result of the preliminary examination or for any other reason, do not require further significant review or examination."

Investigatory Records

The first portion of this revision is intended to render more realistic the showing of harmful effect which the Government would have to make in order to sustain the withholding of investigatory records. It is simply not possible in most cases to establish that release "would" cause particular harm of the type described. But when what is involved is harm so enormous as depriving a defendant of the right to a fair trial, invading personal privacy, compromising our law enforcement operations, and endangering the life or physical safety of law enforcement personnel, existence of a substantial possibility that the harmful effect will ensue ought to be adequate reason for withholding the document.

The second portion broadens the bill's protection of confidential information provided to a criminal law enforcement agency to such information provided to an agency with civil law enforcement functions. There are several agencies that perform important civil law enforcement functions, and often civil law enforcement investigations directly lead to criminal investigations. In these instances it is essential that confidential information furnished only by a confidential source be protected from premature disclosure.

In the past, all records contained in investigatory files compiled for law enforcement purposes have been exempt from disclosure under the Freedom of Information Act. Although such a categorical exemption is too broad, Congress originally adopted that provision in 1966 because of special characteristics of these files which the present bill entirely disregards. First, improper release of the information they contain can be exceptionally harmful, and thus particularly careful screening is required; second, many of these files are of enormous size; and finally, the proportion of nonreleasable information they contain is typically much higher than that contained in other Government files. The combination of

these factors makes it impracticable in some situations to devote the efforts of our law enforcement personnel to a paragraph-by-paragraph screening of these files. This is so whether or not the time which these personnel take from law enforcement duties is paid for by the person making the request. While this consideration does not justify the categorical exception of all investigatory files, it cannot be entirely ignored. The amendment will enable the agency head himself to make a case-by-case finding of impracticability, on the basis of specific factors which can be reviewed by the courts. This resolution is both reasonable and not subject to uncontrolled application by the Executive branch. The last clause of the sentence also prevents this limited "investigatory files" exemption from being abused so as to protect records which are not investigatory records or which the agency knows do not qualify for any specific exemption from disclosure.

THE WHITE HOUSE

WASHINGTON

October 25, 1974

Dear Sir:

President Ford's reasons for vetoing the freedom of information bill have received far too little attention.

It seemed to me you would be interested in a full statement explaining the President's views regarding the legislation.

I hope you find the attached paper useful and informative.

Sincerely,

Paul A. Miltich

Paul A. Miltich
Special Assistant to the President
for Public Affairs

Enclosures (2)

REASONABLE FREEDOM OF INFORMATION BILL NEEDED

President Ford is hoping that when Congress returns to Capitol Hill after the election the lawmakers will produce Freedom of Information Act legislation he can sign.

The existing Freedom of Information Act went on the books in 1966. It gives the public greater access to government documents. It empowers the Federal courts to review agency decisions to withhold information and places on the government the burden of providing that the withholding was proper.

The President recently vetoed a bill aimed at strengthening the 1966 Freedom of Information Act by providing for more prompt, efficient and complete disclosure of information. The President favored the legislation in principle, but he found certain provisions in the bill unreasonable.

In vetoing the bill, the President urged Congress to modify it along lines he was recommending and then return it to him for his signature.

The President wants stronger Freedom of Information legislation -- but he wants legislation which is workable.

Critics of the President's veto have taken the attitude that rejection of the congressionally-passed freedom of information bill is unthinkable. Well, it's true that "freedom of information" is a catch phrase. Who in a democracy is opposed to freedom of information? Better you should be against motherhood.

Let's take a good look at the President's reasons for vetoing the freedom of information bill sent him by the Congress. He took the action reluctantly.

The President found three provisions of the bill objectionable.

One would authorize any Federal judge to examine agency records privately to determine whether those records can be properly withheld under the Freedom of Information Act. This provision would reverse a 1973 Supreme Court ruling which held that judicial review of classified documents should be limited to determining whether the document was, in fact, classified -- and precluded private review by the judge focused on the reasonableness of the classification. Under the new provision, the judge could overturn the agency's classification simply because he found the plaintiff's position just as reasonable.

The President felt that this provision endangered our diplomatic relations and our military and intelligence secrets.

He said he could accept court review of classification except that "the courts should not be forced to make what amounts to the initial classification decision in sensitive and complex areas where they have no particular expertise."

As the provision now reads, the President said, agency decisions dealing with classification of documents would be given less weight in the courts than agency determinations involving routine regulatory matters.

The President therefore proposes that courts be given review authority over classification of documents but that they be required to uphold the agency classification "if there is a reasonable basis to support it."

Mr. Ford's second objection to the vetoed bill was that it would permit access to additional law enforcement investigatory files.

The President objected to an invasion of the confidentiality of FBI files. He also noted that our already overburdened law enforcement agencies do not have the numbers of personnel that would be needed to make a line-by-line examination of each individual public request for such information.

The President proposed that more flexible criteria govern such information requests, so that responding to the requests would not be so heavy a burden.

Finally, the President objected that the vetoed bill set unreasonable time limits for agencies to respond to requests for documents -- 10 days to decide whether to furnish the document, and 20 days for determinations on appeal.

The time provision, Mr. Ford asserted, should provide more latitude.

The President concluded that the bill as sent to him by the Congress was unconstitutional and unworkable. But he endorsed its main objectives.

Fully cognizant of the people's right to know, the President stated in his veto message: "I sincerely hope that this legislation, which has come so far toward realizing its laudable goals, will be reenacted with the changes I propose and returned to me for signature during this session of Congress."

######

FOR IMMEDIATE RELEASE October 17, 1974

Office of the White House Press Secretary

THE WHITE HOUSE

TO THE HOUSE OF REPRESENTATIVES:

I am returning herewith without my approval H.R. 12471, a bill to amend the public access to documents provisions of the Administrative Procedures Act. In August, I transmitted a letter to the conferees expressing my support for the direction of this legislation and presenting my concern with some of its provisions. Although I am gratified by the Congressional response in amending several of these provisions, significant problems have not been resolved.

First, I remain concerned that our military or intelligence secrets and diplomatic relations could be adversely affected by this bill. This provision remains unaltered following my earlier letter.

I am prepared to accept those aspects of the provision which would enable courts to inspect classified documents and review the justification for their classification. However, the courts should not be forced to make what amounts to the initial classification decision in sensitive and complex areas where they have no particular expertise. As the legislation now stands, a determination by the Secretary of Defense that disclosure of a document would endanger our national security would, even though reasonable, have to be overturned by a district judge who thought the plaintiff's position just as reasonable. Such a provision would violate constitutional principles, and give less weight before the courts to an executive determination involving the protection of our most vital national defense interests than is accorded determinations involving routine regulatory matters.

I propose, therefore, that where classified documents are requested the courts could review the classification, but would have to uphold the classification if there is a reasonable basis to support it. In determining the reasonableness of the classification, the courts would consider all attendant evidence prior to resorting to an in camera examination of the document.

Second, I believe that confidentiality would not be maintained if many millions of pages of FBI and other investigatory law enforcement files would be subject to compulsory disclosure at the behest of any person unless the Government could prove to a court -- separately for each paragraph of each document -- that disclosure would cause a type of harm specified in the amendment. Our law enforcement agencies do not have, and could not obtain, the large number of trained and knowledgeable personnel that would be needed to make such a line-by-line examination of information requests that sometimes involve hundreds of thousands of documents, within the time constraints added to current law by this bill.

more

Therefore, I propose that more flexible criteria govern the responses to requests for particularly lengthy investigatory records to mitigate the burden which these amendments would otherwise impose, in order not to dilute the primary responsibilities of these law enforcement activities.

Finally, the ten days afforded an agency to determine whether to furnish a requested document and the twenty days afforded for determinations on appeal are, despite the provision concerning unusual circumstances, simply unrealistic in some cases. It is essential that additional latitude be provided.

I shall submit shortly language which would dispel my concerns regarding the manner of judicial review of classified material and for mitigating the administrative burden placed on the agencies, especially our law enforcement agencies, by the bill as presently enrolled. It is only my conviction that the bill as enrolled is unconstitutional and unworkable that would cause me to return the bill without my approval. I sincerely hope that this legislation, which has come so far toward realizing its laudable goals, will be reenacted with the changes I propose and returned to me for signature during this session of Congress.

GERALD R. FORD

THE WHITE HOUSE,

October 17, 1974.

# # # #

THE WHITE HOUSE

WASHINGTON

October 25, 1974

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Enclosures (2)

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The President recently vetoed a bill aimed at strengthening the 1966 Freedom of Information Act by providing for more prompt, efficient and complete disclosure of information. The President favored the legislation in principle, but he found certain provisions in the bill unreasonable.

In vetoing the bill, the President urged Congress to modify it along lines he was recommending and then return it to him for his signature.

The President wants stronger Freedom of Information legislation -- but he wants legislation which is workable.

Critics of the President's veto have taken the attitude that rejection of the congressionally-passed freedom of information bill is unthinkable. Well, it's true that "freedom of information" is a catch phrase. Who in a democracy is opposed to freedom of information? Better you should be against motherhood.

Let's take a good look at the President's reasons for vetoing the freedom of information bill sent him by the Congress. He took the action reluctantly.

The President found three provisions of the bill objectionable.

One would authorize any Federal judge to examine agency records privately to determine whether those records can be properly withheld under the Freedom of Information Act. This provision would reverse a 1973 Supreme Court ruling which held that judicial review of classified documents should be limited to determining whether the document was, in fact, classified -- and precluded private review by the judge focused on the reasonableness of the classification. Under the new provision, the judge could overturn the agency's classification simply because he found the plaintiff's position just as reasonable.

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######

FOR IMMEDIATE RELEASE October 17, 1974

Office of the White House Press Secretary

THE WHITE HOUSE

TO THE HOUSE OF REPRESENTATIVES:

I am returning herewith without my approval H.R. 12471, a bill to amend the public access to documents provisions of the Administrative Procedures Act. In August, I transmitted a letter to the conferees expressing my support for the direction of this legislation and presenting my concern with some of its provisions. Although I am gratified by the Congressional response in amending several of these provisions, significant problems have not been resolved.

First, I remain concerned that our military or intelligence secrets and diplomatic relations could be adversely affected by this bill. This provision remains unaltered following my earlier letter.

I am prepared to accept those aspects of the provision which would enable courts to inspect classified documents and review the justification for their classification. However, the courts should not be forced to make what amounts to the initial classification decision in sensitive and complex areas where they have no particular expertise. As the legislation now stands, a determination by the Secretary of Defense that disclosure of a document would endanger our national security would, even though reasonable, have to be overturned by a district judge who thought the plaintiff's position just as reasonable. Such a provision would violate constitutional principles, and give less weight before the courts to an executive determination involving the protection of our most vital national defense interests than is accorded determinations involving routine regulatory matters.

I propose, therefore, that where classified documents are requested the courts could review the classification, but would have to uphold the classification if there is a reasonable basis to support it. In determining the reasonableness of the classification, the courts would consider all attendant evidence prior to resorting to an in camera examination of the document.

Second, I believe that confidentiality would not be maintained if many millions of pages of FBI and other investigatory law enforcement files would be subject to compulsory disclosure at the behest of any person unless the Government could prove to a court -- separately for each paragraph of each document -- that disclosure would cause a type of harm specified in the amendment. Our law enforcement agencies do not have, and could not obtain, the large number of trained and knowledgeable personnel that would be needed to make such a line-by-line examination of information requests that sometimes involve hundreds of thousands of documents, within the time constraints added to current law by this bill.

more

Therefore, I propose that more flexible criteria govern the responses to requests for particularly lengthy investigatory records to mitigate the burden which these amendments would otherwise impose, in order not to dilute the primary responsibilities of these law enforcement activities.

Finally, the ten days afforded an agency to determine whether to furnish a requested document and the twenty days afforded for determinations on appeal are, despite the provision concerning unusual circumstances, simply unrealistic in some cases. It is essential that additional latitude be provided.

I shall submit shortly language which would dispel my concerns regarding the manner of judicial review of classified material and for mitigating the administrative burden placed on the agencies, especially our law enforcement agencies, by the bill as presently enrolled. It is only my conviction that the bill as enrolled is unconstitutional and unworkable that would cause me to return the bill without my approval. I sincerely hope that this legislation, which has come so far toward realizing its laudable goals, will be reenacted with the changes I propose and returned to me for signature during this session of Congress.

GERALD R. FORD

THE WHITE HOUSE,

October 17, 1974.

# # # #

THE WHITE HOUSE

WASHINGTON

October 25, 1974

MEMORANDUM FOR THE PRESIDENT

FROM: PHILLIP AREEDA P.A.

I attach a brief statement of your objections to the vetoed H.R. 12471 Amendment to the Freedom of Information Act. I include a brief statement of the revisions you proposed to Congress earlier today.

Defects in Vetoed Amendments to
Freedom of Information Act Amendments

1. Treatment of Classified Information.

Existing law exempts classified information from disclosure. There is no judicial review of the propriety of the classification.

H. R. 12471 provided for de novo judicial determination of the propriety of a classification. The burden of proof was on the government.

H. R. 12471 went too far because it gave no weight to the administrative determination. It seemed to force the judge to examine every classified document in camera in order to make his determination.

(The Conference Report acknowledged the difficulties with the statutory language and indicated that the agency classification should be given substantial weight because of the agency's "unique insights into what adverse affects might occur as a result of public disclosure." But the Conference Report is not statutory language.)

My proposed revisions -- which were sent to Congress today -- do the following:

Provide for judicial review of the propriety of a classification.

Place the burden of proof on the government to justify that its classifications have a reasonable basis.

Authorize in camera inspection by the judge where he (or she) believes it to be necessary.

2. Investigatory Files.

These files have always presented two peculiar difficulties: (1) Many of them are massive in size. (2) Very much of the material in them is not to be disclosed, even under the standards of H. R. 12471.

The existing Act recognizes this problem simply by exempting "investigatory files" from disclosure.

I recognize that some reform may be necessary (1) to permit disclosure of that which properly can be disclosed even though contained in an investigatory file, and (2) to prevent the possible abuse of inserting disclosable material in an investigative file in order to immunize it from disclosure.

H. R. 12471 overcame these difficulties of present law. At the same time, it created a dreadful management problem. It would apparently have forced the examination of millions of pages of investigative files in order to discover disclosable sentences or paragraphs within such vast files.

Finding the proper middle course has not been easy, but I believe that my proposed revisions offer a constructive approach.

I retain the H. R. 12471 tests for disclosure.

I do, however, provide for a way of dealing with those particular vast files which seem mainly to contain material not disclosable under the specified standards.

At the same time I have added new provisions against abuse.

3. Time and Costs.

H. R. 12471 provided an aggregate of 40 days for the administrative disposition of requests. This is too tight.

I suggest adding an additional 25 days for certain cases. If the agency needs more time, it can only obtain it from the courts.

H. R. 12471 provides that those requesting information may be charged for the cost of finding it.

The same principle, I believe, should be applied to the cost of reviewing and examining requests for large volumes of material. My revisions so provide.

4. Conclusion. H. R. 12471 is in the main a good bill. With my revisions, it will be even better.

THE WHITE HOUSE

WASHINGTON

October 25, 1974

Dear Mr. Speaker:

As promised in my Message returning H.R. 12471, the Freedom of Information Act amendments, to the Congress without my approval, I enclose three draft amendments to that bill which would eliminate the basis for my veto if adopted. Also enclosed is a summary and analysis explaining each of the proposed amendments.

I hope that the Congress will, upon its return on November 18, consider these amendments on an urgent basis. Enactment of H.R. 12471 with these modifications will produce truly significant and beneficial legislation.

Sincerely,

Gerald R. Ford

Honorable Carl Albert
Speaker of the
House of Representatives
Washington, D. C. 20515

Enclosures

NOTE: Identical letter to President pro tem of Senate.

Review of Classified Documents
Amendment to H.R. 12471

That Section 2(a) of H.R. 12471 be amended by adding at the end of proposed paragraph (1) contain therein the following:

"Provided: That for matters described in (A), above, a court has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records to the complainant unless it finds that there is a reasonable basis to support the classification pursuant to such Executive order. The court may examine such records in camera only if it is necessary, after consideration by the court of all other attendant material, in order to determine whether such classification is proper."

Review of Classified Documents

This amendment would, as did the provisions it replaces, permit a court to review documents classified by agencies in the interest of national defense or foreign policy and to insure the reasonableness of that classification. However, the proposed language would permit a court to review the document itself and to disclose the document only if there is no reasonable basis to support the classification. This amendment removes an unconstitutional arrangement in H.R. 12471 as vetoed whereby a highly sensitive document pertaining to our national defense would have to be disclosed even if the classification were reasonable. The new language simply provides that after a review of all the evidence pertaining to a classified document, including the document itself if necessary, the document may be disclosed unless there is a reasonable basis for the classification by the agency. The burden of proof remains upon the agency to sustain the reasonableness of the classification.

Time Limits and Costs
Amendment to H.R. 12471

That Section 1(c) of H.R. 12471 be amended by:

a. Substituting the word "thirty" for the word "ten" appearing in proposed paragraph (6)(A)(i) contained therein; and deleting the second sentence of proposed paragraph (6)(B), and substituting therefor the following sentence:

> "No such notices shall specify dates that would result in extensions with respect to a single request for more than fifteen working days."

b. Redesignating proposed paragraph (6)(C), paragraph (6)(D), and inserting as new paragraph (6)(C) the following:

> "(C) If the agency finds at any time before the filing of suit under subparagraph 552(a)(4)(B) above that the periods set forth in subparagraph (A) above and any extension available under subparagraph (B) above are insufficient, it may petition the United States District Court in the District of Columbia for such further extension or extensions as may be needed, setting forth with particularity the reasons therefor and with appropriate notification to the person making the request. The court shall grant such further extension or extensions

as are appropriate if it is persuaded that the agency has proceeded with due diligence in responding to the request and requires additional time in order to make its determinations properly."

That Section 1(b)(2) of H.R. 12471 be amended by deleting the period at the end of the second sentence of proposed paragraph (4)(A) contained therein and adding the following:

", except that the reasonable cost of reviewing and examining records may be charged where such cost is in excess of $100 for any request or related series of requests."

Time Limits and Costs

As vetoed, H.R. 12471 provides that following a request for documents an agency must determine whether to furnish the documents within ten days, and following an appeal from a determination to withhold documents, the agency is afforded twenty days to decide the appeal. In unusual circumstances an agency may obtain an additional ten days for either determination.

Time limits on agency action with regard to requested documents are important additions to the public's right to know of the operations of its Government, and several agencies have already voluntarily adopted time limits for their responses. Experience with these time limits indicates that the restrictions in H.R. 12471 are impracticable. Because of the large number of documents often requested, their decentralized location and the importance of other agency business it would often be impossible to comply with requests in the time allotted.

This amendment would provide thirty days for the initial determination and would provide an additional fifteen days in unusual circumstances. Furthermore, in exceptional circumstances, the agency would be authorized to seek additional time from a court if it could demonstrate due diligence in responding to a request. For particularly burdensome requests, an agency would also be permitted to charge for the cost of reviewing requested documents if such cost exceeded $100 for each request or each series of related requests. This provision would help to defray those unusual expenses in responding to requests for documents at a time when we are seeking to limit our Governmental expenditures. Furthermore, the additional time afforded agencies in responding to requests will lead to more responsive determinations and more efficient use of agency personnel and resources, while still providing for prompt agency response to requested documents.

Investigatory Records
Amendment to H.R. 12471

That Section 2(b) of H.R. 12471 be amended by adding after the word "that" in the second line of proposed paragraph (7) the phrase "there is a substantial possibility that"; by deleting the word "criminal" in the seventh line of proposed paragraph (7); and by adding at the end of that proposed paragraph the following sentence:

"Provided: That where the agency head, after considering the results of a preliminary examination of the files involved in the request, personally finds, in light of (1) the number of documents covered by the request, (2) the proportion of such documents which consist of reports by Federal or State investigative agents or from confidential sources, and (3) the availability of personnel of the type needed to make the required review and examination, that application of the foregoing tests on a record-by-record basis would be impracticable, the agency may apply such tests to the investigatory file as a whole or to reasonably segregable portions thereof; except that this provision shall not be applied to files which

the agency has reason to believe contain records which are not investigatory records compiled for law enforcement purposes, nor shall it protect from disclosure any records which, as a result of the preliminary examination or for any other reason, do not require further significant review or examination."

Investigatory Records

The first portion of this revision is intended to render more realistic the showing of harmful effect which the Government would have to make in order to sustain the withholding of investigatory records. It is simply not possible in most cases to establish that release "would" cause particular harm of the type described. But when what is involved is harm so enormous as depriving a defendant of the right to a fair trial, invading personal privacy, compromising our law enforcement operations, and endangering the life or physical safety of law enforcement personnel, existence of a substantial possibility that the harmful effect will ensue ought to be adequate reason for withholding the document.

The second portion broadens the bill's protection of confidential information provided to a criminal law enforcement agency to such information provided to an agency with civil law enforcement functions. There are several agencies that perform important civil law enforcement functions, and often civil law enforcement investigations directly lead to criminal investigations. In these instances it is essential that confidential information furnished only by a confidential source be protected from premature disclosure.

In the past, all records contained in investigatory files compiled for law enforcement purposes have been exempt from disclosure under the Freedom of Information Act. Although such a categorical exemption is too broad, Congress originally adopted that provision in 1966 because of special characteristics of these files which the present bill entirely disregards. First, improper release of the information they contain can be exceptionally harmful, and thus particularly careful screening is required; second, many of these files are of enormous size; and finally, the proportion of nonreleasable information they contain is typically much higher than that contained in other Government files. The combination of

these factors makes it impracticable in some situations to devote the efforts of our law enforcement personnel to a paragraph-by-paragraph screening of these files. This is so whether or not the time which these personnel take from law enforcement duties is paid for by the person making the request. While this consideration does not justify the categorical exception of all investigatory files, it cannot be entirely ignored. The amendment will enable the agency head himself to make a case-by-case finding of impracticability, on the basis of specific factors which can be reviewed by the courts. This resolution is both reasonable and not subject to uncontrolled application by the Executive branch. The last clause of the sentence also prevents this limited "investigatory files" exemption from being abused so as to protect records which are not investigatory records or which the agency knows do not qualify for any specific exemption from disclosure.

THE WHITE HOUSE
WASHINGTON

TO: Bob Hartmann

FROM: PAUL THEIS PT

In case you missed it... the NPC Record of this past week has a good concise rundown on the new Freedom of Information law (copy attached).

RECORD

Volume XXV
Number 5
Feb. 20, 1975

CLUB LUNCHEON

Senator Frank Church (D-Idaho) will be the speaker at an NPC luncheon Thursday, Feb. 27. Chairman of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities, Church will discuss the current inquiry into the CIA. Relentlessly independent, Church has earned a reputation for toughness in many areas including campaign financing reform, pay raises for Congress and Administrative officials (which he rejects). He was also co-chairman of the Committee on Emergency Powers of the Presidency. Club luncheons start at 12:30 p.m. Tickets are $6 each; call 737-2502.

(This is the first in a new series of reports by the Professional Relations Committee of the National Press Club offered as a service to the members. It was prepared by William J. Eaton of the Chicago Daily News.)

NEW FREEDOM OF INFORMATION ACT
TAKES EFFECT FEB. 19

* * *

HERE'S HOW TO USE IT

A revised Freedom of Information Act, which takes effect Feb. 19, is designed to give citizens quicker, easier access to documents in federal government files.

The 1974 amendments written into law over President Ford's veto do several things:

They impose strict deadlines on federal agencies to respond to requests;

While they still give the government nine specific grounds for denying requests for documents, they define and limit the exceptions relating to national security and investigatory records;

They put the burden of proof on the government to justify a claim of secrecy when a request is denied and a citizen sues to get the information. Judges are permitted to review documents to see whether "Top Secret" classifications and other security labels are being misused to prevent disclosure of non-sensitive information.

On the other hand, the 1974 amendments do not make the act a magical "open Sesame" for reporters and editors. You must start the disclosure machinery with a written request and be ready to file a prompt appeal to the head of an agency if the initial request fails. If your appeal is unsuccessful, you may want to seek a partial disclosure, or go to court. Although Freedom of Information Act cases are supposed to be

(Cont. on Page 2)

handled speedily and the government may get stuck with your lawyer's bill if you win, going to court can be costly as well as time-consuming.

The show of strong Congressional backing for the new law, however, may well open more of the closed federal files without resort to litigation.

Here's a guide to the new law and some suggestions on how to get the greatest advantage from it:

DETAILS OF THE ACT

• TITLE: Freedom of Information Act, 5 U.S.C. 552. This means the law can be found in Volume 5 of the U.S. Code, section 552. The Code is available at law libraries and most lawyers' offices.

• THE REQUEST: The law says that you must "reasonably describe" the records you want. You do not need the formal name of the document or report but describe it well enough so that it can be found with a reasonable try. Give all the details you can. The request should be addressed to the agency having the records, its general counsel or the agency official designated to handle FOI Act matters. Give your telephone number in your letter to speed up things.

• FEES: The law allows the government to assess "reasonable standard charges for document search and duplication." It says these fees may be waived if the agency decides that release of the information primarily benefits the public at large. You could save money by asking to see the documents instead of having copies made. Your request may set a ceiling on such charges in advance.

• TIMETABLE: A request for information, says the new law, must be answered within 10 working days. If some or all of the requested information is refused, you must be told of your right to appeal and given the name of the official, usually the agency head, who will rule on it. With some exceptions, that decision must be made within 20 working days from the time an appeal is filed. If documents are denied, an appeal should be filed along with copies of the request and the denial.

If you lose the appeal or there is no response within the prescribed periods, you may file suit in Federal court. The government must file an answer in 30 days, instead of the customary 60 days, unless they win a delay by proving "exceptional circumstances."

• EXEMPTIONS: There are nine justifications spelled out in the law for refusal to disclose information. Study them before making a request.

--(1) Documents properly classified as secret "in the interest of national defense or foreign policy." Under the 1974 amendments, however, Federal courts may examine a claim of national security to see if it is being used to suppress material that would be politically embarrassing but not truly sensitive. Also, proper classification of a few pages of a report does not justify secrecy for the entire document.

--(2) Documents related "solely to the internal personnel rules and practices of an agency" that do not affect the public.

--(3) Documents kept confidential by Federal law, such as income tax returns, applications for patents and completed census forms.

--(4) Trade secrets and commercial or financial information furnished by a person on a privileged or confidential basis.

--(5) Inter-agency or intra-agency communications, with views and recommendations of officials on policy or legal matters. This has been a widely used exemption. Experts suggest it does not apply to factual reports or analyses, however.

(Continued)

--(6) Personnel and medical files whose disclosures would be a "clearly unwarranted invasion" of privacy. If your request touches on this area, you should explain why you want the information so officials can weigh whether any invasion of privacy resulting from disclosure would be "unwarranted."

--(7) The exemption for "investigatory files" has been narrowed. It now covers investigatory records compiled for law enforcement purposes (such as FBI files) but only if disclosure of such records would: (a) interfere with law enforcement; (b) deprive a person of fair trial; (c) constitute an unwarranted invasion of personal privacy; (d) disclose the identity of a confidential source and, in a criminal investigation or lawful national security intelligence investigation, confidential information furnished only by the confidential source; (e) disclose investigative techniques and procedures; (f) endanger the life or physical safety of law enforcement personnel. This has been another widely used exemption.

--(8) Reports prepared by or for an agency responsible for supervision of financial institutions, such as reports by the Securities and Exchange Commission on the New York Stock Exchange.

--(9) Geological and geophysical data, including maps, concerning oil and natural gas exploration by private firms.

ADVICE

There are two organizations willing to help reporters exercise their rights under the revised FOI Act. They are:

Freedom of Information Clearinghouse, P.O. Box 19367, Washington, D.C., 20036. This is a Ralph Nader spinoff. Contact Mark Lynch at 785-3705.

Project on Freedom of Information and the National Security, 122 Maryland Ave. N.E., Washington, D.C. 20002. Run by former National Security Council aide Morton Halperin, this is sponsored jointly by the American Civil Liberties Union Foundation and the Center for National Security Studies. Phone: 544-5380. It specializes in documents held by the Defense Department, Central Intelligence Agency, State Department and National Security Council.

SAMPLE REQUEST

(Name and Address of Government Agency)
Washington, D.C.

Dear (general counsel or other designated official):

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, I hereby request access to, or a copy of, (describe the document) together with all appendices, annexes, or other materials attached to the (document).

If any expenses in excess of $_____ are incurred in connection with this request, please inform me in advance for my approval. (A person may ask that any fees be waived if furnishing the information could be considered as "primarily benefitting the public".)

If you determine that some portions of the (document) are exempt from release, I request that you provide me with the remainder. I reserve my right to appeal any such decisions.

If you do not grant this request within 10 working days, I will consider my request denied.

Sincerely,

coming events . . .

Thurs., Feb. 20	NPC Luncheon: Rep. Mike Harrington and Walter Heitmann, Chilean Ambassador: CANCELLED
Mon., Feb. 24	Newsmaker Breakfast: Gerald Parsky, Assistant Secretary of Treasury, media only, 8 a.m.*
Thurs., Feb. 27	NPC Luncheon: Sen. Frank D. Church (D-Idaho)*
Thurs., Feb. 27	Burgundy Enhancement Wine Tasting, President's Room, 6 to 8 p.m., $15 per person*

RESERVATIONS for events marked with an asterisk (*) may be made now: 737-2502

JOB OPPORTUNITY

P/R DIRECTOR for racetrack. Media, PR managerial and special events background preferred. Salary in low 20's. Must relocate. (R-126).
APPLICANTS: Send resume plus a cover letter for employer, outlining how your background fills his needs, to NPC Employment Committee Chairman: Thomas G. Riley, Manager, Goodyear Public Relations, 812 National Press Building, Washington, D. C. 20045. Include job code and your NPC membership number.

NPC TRANSPORTATION TABLE: Dan Sweeney, Teamsters Legislative Director, will be guest speaker in East Lounge, Feb. 21. Program begins at noon, and everyone is welcome.

NEW NPC PHONE NUMBER: 737-2502 is the new reservations number for all club functions, ticket requests and parties. Other club offices, including the main desk for paging or information, will continue to use 737-2500.

GOURMET CORNER: Steak Night, Tuesday; Colorado Trout Night, Wednesday; Lobster Night, Friday. (Lobster reservations needed by Thursday noon).

"MAKE NO MISTAKE, I'm biased," Federal Energy Administrator Frank Zarb warned an NPC luncheon. Four alternative energy programs exist, Zarb said: rationing, allocations, price setting or laissez faire. Rationing he dismissed as not practical. Allocations are "cumbersome, disruptive and inequitable," and by all means, "let's not do nothing." As to questions about the auto industry doing its part, Zarb said that DOT and EPA negotiations with car manufacturers are progressing satisfactorily at this time. Zarb suggested one energy conservation measure for the Press Club: not so many bright lights at the speakers luncheons.

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RECORD
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EDITOR NEXT WEEK: Dennis S. Feldman, FAA, 426-3883. Send copy to editor, Press Club Record.