The original documents are located in Box 18, folder "General Accounting Office - General (1)" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

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Phil A:

Is this a matter in which you have a concern? Was the subject raised by Saxbe when you and Don.R. met with him?

P.

GA0

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Mr. Buchen

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

NOV 12 1974

Honorable Elmer B. Staats
Comptroller General of the
United States
Washington, D. C. 20548

Dear Mr. Staats:

Your letter of October 31, 1974, makes reference to sections 611 and 612 of the recent Treasury Appropriation Act, Public Law 93-381, and to OMB proposals for Mexican border law enforcement.

In the Fall of 1973, OMB was advised that the U.S. Customs Service was reinstituting a uniformed patrol force along the U.S. Mexican border. With the cooperation and participation of the Departments of the Treasury and of Justice, OMB began a study of the extent of duplication and conflict arising between the newly deployed Customs Patrol along the border and the existing Border Patrol, I&NS, with the objective of developing a coordinated border law enforcement strategy.

Upon completion of this study, and after obtaining agreement of the Departments to the recommendations of the study, I formally advised Secretary Simon and Attorney General Saxbe of the conclusions of the Mexican border law enforcement review by identical letters of June 5, 1974. Those letters suggested that operating agreements, necessary for the implementation of the study's recommendations, should be completed by September 30, 1974.

Subsequently, hearings on the study's recommendations were held before the Subcommittee on Legislation and Military Operations, Committee on Government Operations, U.S. House of Representatives, on July 10, 11, 16, and August 14, 1974. During the first day of the hearings, I told the Committee that the study's recommendations would not be implemented until after the

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Committee had an opportunity to review the facts underlying those policy recommendations and to conclude its deliberations. This, of course, was agreed to by the Departments of Justice and the Treasury.

While these hearings were in progress, the National Customs Service Association and one of its member employees brought suit in the U.S. District Court for the District of Columbia. This suit was filed on July 29, 1974; it sought to enjoin the implementation of the study's recommendations. That litigation has not yet been resolved.

Thereafter, on August 21, 1974, the Treasury Appropriation Act, Public Law 93-381, was enacted. It contained the previously referenced sections 611 and 612. OMB continues to be aware of the Congressional understanding of the study's recommendations, as expressed in the legislative history of sections 611 and 612, part of which was cited in your opinion letter of October 11, 1974, B-114898.

Throughout this period, the OMB staff has sporadically been involved with this problem in response to the staff of the Subcommittee on Legislation and Military Operations, and in direct connection with the ongoing case in the District Court of the District of Columbia. Additionally, from time to time, our staff has continued to confer on the Mexican border law enforcement situation. These discussions have taken into account the Subcommittee hearings, the litigation, and sections 611 and 612 of Public Law 93-381.

We are aware that Congress may impose conditions on the use of appropriations, even where an activity is otherwise lawful. I have been advised that none of the staff discussions has even considered undertaking any activity that would conflict with sections 611 and 612; on the contrary, these discussions have been addressing alternative solutions to the continuing law enforcement problems which occasioned the original recommendations, taking into account the objections perceived by Congress.

As I pointed out above, I represented to the Subcommittee on Legislation and Military Operations that the

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study's recommendations would not be implemented until after the Committee had an opportunity to review the matter. I have not altered that representation; and I have been advised that OMB staff has not attempted to abrogate it. You will recall that my June 5, 1974, letters asked for the conclusion of operating agreements by September 30, 1974. That date has come and gone without those operating agreements, which were basic to any implementation of the study's recommendations.

I believe that the Secretary of the Treasury will also be able to advise you that no action has been taken to implement the study's recommendations, nor have any funds been obligated or expended in violation of sections 611 and 612 of Public Law 93-381.

Sincerely,

Roy L. Ash
Director

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THE WHITE HOUSE
WASHINGTON

Date 12/24/74

TO: Phil Areeda

FROM: DUDLEY CHAPMAN

I have no comments to suggest.

Note: GAO cites lack of information on source of funds for White House handouts - page clipped.

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GAO

THE WHITE HOUSE

WASHINGTON

December 16, 1974

MEMORANDUM FOR: Jeanne Davis

FROM: Bill Casselman

Attached is a draft report by GAO on "Gifts Given by U.S. Presidents since 1960." In order to prepare a response for Phil Buchen, I would appreciate any comments that you might have on behalf of the NSC by Monday, December 23.

Thank you.

Enclosure
cc: Phil Buchen

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Monday 12/16/74

1:30 Barry brought this over; he is distributing copies to those who will review it.

Phil A:

Kindly organize, ~~and~~ review, and approve comments to go to V.L. Lowe by Dec. 26, 1974.

P.

Dudley:
Please note due date—
Dec 26

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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

GENERAL GOVERNMENT
DIVISION

DEC 16 1974

Mr. Philip W. Buchen
Counsel to the President
The White House

Attention: Mr. Barry Roth

Dear Mr. Buchen:

Enclosed are five copies of our draft report to Senator Proxmire on gifts given by U.S. Presidents since 1960.

This is a draft of a proposed report of the General Accounting Office and is subject to revision. It should, therefore, not be released for unauthorized purposes, and it should be safeguarded to prevent any premature or unauthorized disclosure.

We would appreciate receiving any comments you wish to make on this draft report within 10 days from the date of this letter. We will be glad to discuss this matter with you or your representatives if you so desire. Any inquiries concerning this report should be directed to Louis W. Hunter, Associate Director, International Division (Code 129, Extension 5445).

We are also furnishing copies of this report to the Departments of State, Defense, Treasury, and Interior, the Agency for International Development, and the United States Information Agency.

Sincerely yours,

V L Lowe

Victor L. Lowe
Director

Enclosures - 5

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DRAFT

GIFTS GIVEN BY U.S. PRESIDENTS SINCE 1960

Multi-agency

NOTICE -- THIS DRAFT RESTRICTED TO OFFICIAL USE

This document is a *draft* of a proposed report of the General Accounting Office. It is subject to revision and is being made available solely to those having responsibilities concerning the subjects discussed for their review and comment to the General Accounting Office.

Recipients of this draft must not show or release its contents for purposes other than official review and comment under any circumstances. At all times it must be safeguarded to prevent premature publication or similar improper disclosure of the information contained therein.

Code 46221

BY

THE COMPTROLLER GENERAL

OF THE UNITED STATES

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

INTERNATIONAL DIVISION

DEC 16 1974

The Honorable
The Secretary of State

Attention: Director, Operations Analysis
and GAO Liaison

Dear Mr. Secretary:

Enclosed are five copies of our draft report to Senator Proxmire on gifts given by U.S. Presidents since 1960.

This is a draft of a proposed report of the General Accounting Office and is subject to revision. It should, therefore, not be released for unauthorized purposes, and it should be safeguarded to prevent any premature or unauthorized disclosure.

We would appreciate receiving any comments you wish to make on this draft report within 10 days from the date of this letter. We will be glad to discuss this matter with you or your representatives if you so desire. Any inquiries concerning this report should be directed to Louis W. Hunter, Associate Director of this Division (Code 129, Extension 5445).

We are also furnishing copies of this report to the Executive Office of the President, Departments of Defense, Treasury, and Interior, the Agency for International Development, and the United States Information Agency.

Sincerely yours,

J. K. Fasick

J. K. Fasick
Director

Enclosures - 5

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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

RESOURCES AND ECONOMIC
DEVELOPMENT DIVISION

DEC 16 1974

The Honorable
The Secretary of Interior

Dear Mr. Secretary:

Enclosed are 10 copies of our draft report to Senator Proxmire on gifts given by U.S. Presidents since 1960. We are furnishing copies of this letter and draft reports to the Director, Office of Audits and Investigations. We understand that he will furnish copies to appropriate Department officials and will coordinate the responses in preparing the Department's response.

This is a draft of a proposed report of the General Accounting Office and is subject to revision. It should, therefore, not be released for unauthorized purposes, and it should be safeguarded to prevent any premature or unauthorized disclosure.

We would appreciate receiving any comments you wish to make on this draft report within 10 days from the date of this letter. We will be glad to discuss this matter with you or your representatives if you so desire. Any inquiries concerning this report should be directed to Louis W. Hunter, Associate Director, International Division (Code 129, Extension 5445).

We are also furnishing copies of this report to the Executive Office of the President, Departments of Defense, State, and Treasury, the Agency for International Development, and the United States Information Agency.

Sincerely yours,

Henry Eschwege

Henry Eschwege
Director

Enclosures - 10

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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

INTERNATIONAL DIVISION

DEC 16 1974

The Honorable
The Secretary of Defense

Attention: Deputy Comptroller for Audit Reports

Dear Mr. Secretary:

Enclosed are 30 copies of our draft report to Senator Proxmire on gifts given by U.S. Presidents since 1960.

This is a draft of a proposed report of the General Accounting Office and is subject to revision. It should, therefore, not be released for unauthorized purposes, and it should be safeguarded to prevent any premature or unauthorized disclosure.

We would appreciate receiving any comments you wish to make on this draft report within 10 days from the date of this letter. We will be glad to discuss this matter with you or your representatives if you so desire. Any inquiries concerning this report should be directed to Louis W. Hunter, Associate Director of this Division (Code 129, Extension 5445).

We are also furnishing copies of this report to the Executive Office of the President, Departments of State, Treasury, and Interior, the Agency for International Development, and the United States Information Agency.

Sincerely yours,

J. K. Fasick

J. K. Fasick
Director

Enclosures - 30

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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

GENERAL GOVERNMENT
DIVISION

DEC 16 1974

The Honorable
The Secretary of Treasury

Dear Mr. Secretary:

Enclosed are five copies of our draft report to Senator Proxmire on gifts given by U.S. Presidents since 1960.

This is a draft of a proposed report of the General Accounting Office and is subject to revision. It should, therefore, not be released for unauthorized purposes, and it should be safeguarded to prevent any premature or unauthorized disclosure.

We would appreciate receiving any comments you wish to make on this draft report within 10 days from the date of this letter. We will be glad to discuss this matter with you or your representatives if you so desire. Any inquiries concerning this report should be directed to Louis W. Hunter, Associate Director, International Division (Code 129, Extension 5445).

We are also furnishing copies of this report to the Executive Office of the President, Departments of Defense, State, and Interior, the Agency for International Development, and the United States Information Agency.

Sincerely yours,

V L Lowe

Victor L. Lowe
Director

Enclosures - 5

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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

INTERNATIONAL DIVISION

DEC 16 1974

The Honorable James Keogh
Director
United States Information Agency

Dear Mr. Keogh:

Enclosed are five copies of our draft report to Senator Proxmire on gifts given by U.S. Presidents since 1960.

This is a draft of a proposed report of the General Accounting Office and is subject to revision. It should, therefore, not be released for unauthorized purposes, and it should be safeguarded to prevent any premature or unauthorized disclosure.

We would appreciate receiving any comments you wish to make on this draft report within 10 days from the date of this letter. We will be glad to discuss this matter with you or your representatives if you so desire. Any inquiries concerning this report should be directed to Louis W. Hunter, Associate Director of this Division (Code 129, Extension 5445).

We are also furnishing copies of this report to the Executive Office of the President, Departments of Defense, State, Treasury, and Interior, and the Agency for International Development.

Sincerely yours,

J. K. Fasick

J. K. Fasick
Director

Enclosures - 5

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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

INTERNATIONAL DIVISION

DEC 16 1974

The Honorable Daniel Parker
Administrator
Agency for International Development

Attention: GAO Liaison, Office of Auditor General

Dear Mr. Parker:

Enclosed are five copies of our draft report to Senator Proxmire on gifts given by U.S. Presidents since 1960.

This is a draft of a proposed report of the General Accounting Office and is subject to revision. It should, therefore, not be released for unauthorized purposes, and it should be safeguarded to prevent any premature or unauthorized disclosure.

We would appreciate receiving any comments you wish to make on this draft report within 10 days from the date of this letter. We will be glad to discuss this matter with you or your representatives if you so desire. Any inquiries concerning this report should be directed to Louis W. Hunter, Associate Director of this Division (Code 129, Extension 5445).

We are also furnishing copies of this report to the Executive Office of the President, Departments of Defense, State, Treasury, and Interior, and the United States Information Agency.

Sincerely yours,

J. K. Fasick

J. K. Fasick
Director

Enclosures - 5

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DRAFT

B-181244

The Honorable William Proxmire
United States Senate

Dear Senator Proxmire:

Your request of June 27, 1974, asked us to compile a list of gifts exceeding $500 each given by U.S. Presidents since 1960 to any foreign or U.S. recipient and to determine the President's authority to donate such gifts and any reporting requirements levied on him. Your request mentioned the gift of a helicopter to President Anwar Sadat by President Nixon. This matter was discussed in a separate letter to you dated October 31, 1974.

Presidential gift giving is based more on historical practices than on specific statutory authority. Our review showed that U.S. Presidents gave about 2,600 gifts to nearly 940 foreign and U.S. recipients from 1960 to September 1974. Most of these gifts were funded from the State Department's "Emergencies in the Diplomatic and Consular Service" appropriation. However, since State did not provide access to its expenditure records, we were not able to determine the value of these gifts. Other funds associated with Presidential gifts included those provided by the Department of Defense for transportation and the United States Information Agency. In addition, some American manufacturers donate items which are given as Presidential gifts.

Since there are no central records on Presidential gifts we solicited information from several agencies which we believed may have had roles in funding or otherwise providing Presidential gifts. These agencies were the Executive Office of the President, the Departments of State, Defense, and Treasury, the United States Information Agency (USIA),

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and the Agency for International Development. We examined appropriate agency records made available to us but there was no assurance they were complete. The scope of the review and our response to your request has been limited because State would not provide access to its expenditure documents.

State has said, however, it will review its records and provide any information it has regarding the cost of specific gifts which we believe is essential to the review. We are requesting cost information for specific gifts but, in order to not delay this response, we are providing a summary list of gifts by type (see appendix I) and listings of foreign and U.S. recipients (see appendices II and III). We will provide a followup report when cost information is received. Additional information follows.

BACKGROUND

State's Office of Protocol has a primary role in Presidential gifts since it is responsible for maintaining records of gifts given, recommending to the White House appropriate gifts to be given, obtaining and preparing the gifts for presentation, presenting the gifts, and storing an inventory of gifts which are obtained in advance of presentation. We were told State does not have a written policy or guidelines covering Presidential gifts but it has an unwritten policy for trying to hold gift cost to less than $1,000 for each gift.

Gifts valued over $1,000 have been given but, according to State, some manufacturers donate or offer substantial discounts on items to be given as Presidential gifts. For instance, Steuben crystal items are reduced 50 percent. The maximum cost to State is $1,000 although some pieces are valued at several thousand dollars. Boehm porcelain items are other examples

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where State pays only a fraction of their value. However, we were not able to verify this information since State did not provide access to its expenditure records.

Gifts donated by U.S. manufacturers may involve Government expenditures for crating and transportation. For example, Defense incurred expenses exceeding $32,000 to airlift two cars donated by General Motors Corporation to Russia.

State officials acknowledged that the Department maintains an inventory of items the President can give. This includes crystal and porcelain items, commemorative plates and books.

State officials, however, declined to provide any information concerning the inventory or access to the storage area.

AUTHORITY AND PURPOSE FOR GIFTS

It is reasonable to infer from the Foreign Gifts and Decorations Act (Public Law 89-673, as amended, 5 U.S.C. 7342) that the United States, and particularly the State Department, may be required to offer gifts to certain foreign countries and foreign dignitaries as a matter of diplomatic etiquette. However, neither in the State Department appropriation acts nor in any other legislation have we been able to find a declaration of congressional policy regarding the giving of gifts to foreign countries or foreign officials. State acknowledges that Presidential gift giving is not based on specific statutory authority but rather, the longstanding practice is a matter of courtesy showing respect, friendship, and appreciation. Examples of occasions for gift giving include official and state visits, marriages, births, coronations, and commemorations of special events.

DRAFT

DEPARTMENT OF STATE FUNDING

Historically, State has used funds from its "Emergencies in the Diplomatic and Consular Service" appropriation to finance Presidential gifts. This appropriation provides funds for relief and repatriation loans to U.S. citizens abroad and for other emergencies of the Department. In recent years the appropriation has been $2.1 million with $525,000 earmarked for relief and repatriation and $1,575,000 for what State calls its regular annual requirements.

The language and legislative history of this appropriation is not clear with respect to the propriety of purchasing gifts with funds from this appropriation. The appropriation act (Public Law 93-162, November 27, 1973) merely provides that these funds shall be used "to meet unforeseen emergencies arising in the Diplomatic and Consular Service". The appropriation justification submitted to the Congress by State defines the purposes of this appropriation in broad terms:

> "This appropriation is utilized to meet emergency requirements in the conduct of foreign affairs for which the granting of specific appropriations is not feasible, due to the urgency of requirements in some instances, and the confidential character of the purpose for which funds are needed in others. It is essential to the furtherance and protection of United States interests in foreign countries that there be a fund from which extraordinary expenditures can be made without regard to the usual limitations upon the disbursement of Government funds and without the necessity of publicly reporting the nature of the expenditure."

The appropriation act (P.L. 93-162) provides that expenditures are to be made pursuant to the requirement of title 31 U.S.C. 107. This section provides:

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> "Whenever any sum of money has been or shall be issued, from the Treasury, for the purposes of intercourse or treaty with foreign nations, in pursuance of any law, the President is authorized to cause the same to be duly settled annually with the General Accounting Office, by causing the same to be accounted for, specifically, if the expenditure may, in his judgement, be made public; and by making or causing the Secretary of State to make a certificate of the amount of such expenditure, as he may think it advisable not to specify; and every such certificate shall be deemed a sufficient voucher for the sum therein expressed to have been expended."

The legal effect of this section is to make all expenditures, when administratively determined to be confidential and made under cover of a certificate executed by the Secretary of State pursuant to this section, final and conclusive upon the accounting officers of the Government. As a result GAO is specifically denied the legal right to examine any documents applicable to expenditures made under 31 U.S.C. 107. Additionally, 31 U.S.C. 54, which generally gives GAO access to books and records of the departments specifically excludes expenditures made under section 107 from authority of the section.

In order to make a meaningful and complete review we requested State provide access to its expenditure documents and records pertaining to Presidential gifts. State did not provide the requested access and said the appropriation has been used intentionally because of the confidentiality afforded by the legislative authority granted under 31 U.S.C. 107. According to State this precludes embarrassing, invidious comparisons regarding the value of official gifts given by the President or received by him in behalf of the United States. It was State's belief that disclosure of this information would not be in the best interests of the U.S. Government. In turning down our request, State said the congressional appropriations subcommittees concerned are aware of such use of the appropriation and all expenditures made from it are available for their review.

DRAFT

In 1974 State used funds from its educational exchange appropriation to make a Presidential gift of a $30,000 scholarship for educational exchange between Iceland and the United States. This gift was to commemorate Iceland's 1100th anniversary of its settlement.

OTHER AGENCIES

As previously noted, State has the primary role in providing for Presidential gifts but other agencies having minor roles include:

1. Executive Office of the President

Personnel in the Executive Office of the President told us the White House does not provide funds for Presidential gifts. Small gifts such as tie bars and pens are given out during Presidential trips but we were told that no Federal funds were used to purchase the "handouts". The sources of the funds and handouts were not disclosed to us.

2. Department of Defense

Defense officials told us the Department does not fund or present gifts in the name of the President, Defense, however, has used its Air Force Mission Account to fund costs incurred in using its resources to transport some gifts to their recipients. For example, Defense aircraft were used to airlift two of the automobiles donated by U.S. manufacturers to Russia. The cost to airlift each was $16,000. In another instance, Defense airlifted a pair of musk ox to China and returned with China's gift of two giant panda bears. This trip cost about $63,700. Defense may also incur expenses to transport a 4-ton slice of sequoia tree to Iceland (see page 7).

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DRAFT

3. United States Information Agency

USIA has provided 45 photograph albums of visits by foreign dignitaries since 1960. USIA estimated the albums cost about $275 each and were funded from the Agency's salaries and expenses appropriation. The Agency has also on occasion provided books which were given as Presidential gifts. Such books have been donated to the Agency. We were told that other than these items, the Agency neither funds nor gives gifts in the President's name.

4. National Park Service

A 4-ton piece of sequoia tree given to Iceland in 1974 was cut from a national park tree which had fallen during a storm. According to a Park Service official negotiations are being conducted with the University of California for treating and perserving the piece of sequoia. It is estimated this will cost about $20,000 but, according to the Park Service, appropriated funds will not be used for this. The Navy will probably transport the piece to Iceland since airlift by the Air Force would be too expensive.

GIFTS GIVEN

Appendix I is a summary list of gifts given from 1960 to September 1974. The gifts vary in type and value and range from inscribed Presidential photographs and books to automobiles and items of Boehm porcelain and Steuben crystal. Some items, for example, the automobiles, the Boehm porcelain "Bird of Peace," and the Cybis porcelain chess set were identified as having been donated by the manufacturers. But generally the State Department records made available to us did not identify whether the gifts had been donated.

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The listing was based primarily on State records and there was no assurance by State that the records were complete. In one instance, we were provided with a picture of a chess set by Cybis which was given but not recorded in State's records. We also compared State's records for gifts given by President Johnson to foreign recipients in 39 countries to White House gift records. We found the records were in agreement for 23 of the countries. For the other 16 countries there were discrepancies in that of the 543 gifts recorded in White House records, 179 were not shown in State records while 67 gifts appearing in State records were not shown in White House records. These gifts included such items as autographed Presidential photographs and photograph albums, books, cuff links and other jewelry, bronze busts, and Asian medals. The gifts were similar in nature to gifts presented by the President on other occasions.

Appendix IV includes photographs of several Presidential gifts. Some are one of a kind while others were given on several occasions.

GIFT RECIPIENTS

Appendix II lists over 900 foreign recipients of Presidential gifts from 1960 to September 1974. The recipients represented 130 countries and international organizations and ranged from Prime Ministers, Presidents, and other high-level government and state officials and members of their families to charitable organizations and the people of a country.

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Appendix III lists the 29 American citizens and organizations who have received Presidential gifts. For the most part, the American recipients were ambassadors and/or their wives. Their gifts have consisted of such items as Boehm porcelain, silver trays and bowls, cigarette boxes, and books. According to State Department officials, these gifts were given as a matter of courtesy for assistance given during a Presidential visit. The two U.S. organizations which received gifts were the U.S. Mission in the Philippines and the 13th Air Force. Both were given bronze busts of President Johnson.

GIFTS RECEIVED

Appendix V contains examples of gifts which were exchanged by President Johnson and foreign heads of government and chiefs of state on ten occasions. The countries represented were Germany, Japan, Thailand, and the United Kingdom. To date we have been unable to obtain simliar information from the Executive Office of the President for President Nixon.

- - - -

We will prepare a followup to this report when we obtain cost information for specific gifts. Please let us know if we can be of further assistance on this matter.

Sincerely yours,

Comptroller General
of the United States

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Orig. ret'd to Casselman 2/11

THE WHITE HOUSE

WASHINGTON

January 6, 1975

MEMORANDUM FOR: Jeanne Davis

FROM: Bill Casselman

SUBJECT: Draff GAO Report

Attached is a draft GAO report on "Proposals to Strengthen the Foreign Gifts and Decorations Act of 1966." In order to incorporate them in a response for Phil Buchen, I would appreciate any comments that you might have on behalf of the NSC by Monday, January 13.

Your assistance is appreciated.

Enclosure

cc: Phil Buchen

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JAN 6 1975

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

GENERAL GOVERNMENT
DIVISION

Mr. Philip W. Buchen
Counsel to the President
The White House

Dear Mr. Buchen:

Enclosed are three copies of our draft report to the Congress on the administration of the Foreign Gifts and Decorations Act of 1966.

This is a draft of a proposed report of the General Accounting Office and is subject to revision. It should, therefore, not be released for unauthorized purposes, and it should be safeguarded to prevent any premature or unauthorized disclosure.

We would appreciate receiving your comments on this draft report within 10 days from the date of this letter. We will be glad to discuss this matter with you or your representatives if you so desire. Any inquiries concerning this report should be directed to Mr. Louis W. Hunter, Associate Director of the International Division (Code 129, Extension 5445).

We are also furnishing copies of this draft report to the General Services Administration, the Departments of State and Defense, and the Smithsonian Institution for review and comment.

Sincerely yours,

John D. Heller for

Victor L. Lowe
Director

Enclosures - 3

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DRAFT

JAN 6 1975

PROPOSALS TO STRENGTHEN THE FOREIGN GIFTS AND DECORATIONS ACT OF 1966

MULTIAGENCY

NOTICE — THIS DRAFT RESTRICTED TO OFFICIAL USE

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BY
THE COMPTROLLER GENERAL
OF THE UNITED STATES

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GAO-333 (Rev. Feb. 70)

GPO : 1973 O - 500-686

DRAFT

GAO

THE WHITE HOUSE

WASHINGTON

January 29, 1975

Dear Mr. Hunter:

Thank you for the opportunity to review and comment on the draft GAO report entitled "Proposals to Strengthen the Foreign Gifts and Decorations Act of 1966." I have limited this review to the factual portions of the report, and will defer, for the present time, commenting on the legislative proposals that are made therein.

As a member of my staff has already related to your representatives, our only comment is with respect to the recording process for gifts that is described on page 7 of the report. Rather than the four cards discussed in the second full paragraph on this page, an original card and five copies are prepared for each gift received by the White House. Two copies are maintained in the mail room files, while the remainder are maintained as described in the report.

I trust that this information has been helpful to you. Please do not hesitate to call upon my office should further assistance be required.

Sincerely,

Philip W. Buchen

Philip W. Buchen
Counsel to the President

Mr. Louis W. Hunter
Associate Director of the
International Division
United States General Accounting Office
Washington, D.C. 20548

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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

GENERAL GOVERNMENT
DIVISION

Mr. Philip W. Buchen
Counsel to the President
The White House

Dear Mr. Buchen:

Enclosed are three copies of our draft report to the Congress on the administration of the Foreign Gifts and Decorations Act of 1966.

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We are also furnishing copies of this draft report to the General Services Administration, the Departments of State and Defense, and the Smithsonian Institution for review and comment.

Sincerely yours,

John D. Heller for

Victor L. Lowe
Director

Enclosures - 3

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DOMESTIC COUNCIL COMMITTEE ON THE RIGHT OF PRIVACY

WASHINGTON, D.C. 20504

For file

January 29, 1975

Mr. David P. Weinberger
5920 S. W. 16th Terrace
West Miami, Florida 33155

Dear Mr. Weinberger:

Mr. Philip W. Buchen has received your letter of December 20, 1974, and has asked me to reply since he is no longer Executive Director of the Privacy Committee. My delay in responding is occasioned by the need to communicate with the General Accounting Office concerning the matter you raised. I am enclosing a detailed response from GAO which undoubtedly you have already received.

Your letter predicates the credibility of this Administration's dedication to privacy matters upon its ability to compel an answer from GAO. You must appreciate that the GAO is an arm of the Congress and responsible solely to it. Because of the Constitutional separation of powers, no official of the Executive branch has any authority to direct or control that agency. To hold an Administration responsible for imposing its will on an entity neither accountable nor responsible to it is grossly unfair.

As you may know, the Committee formally has endorsed action to amend the Fair Credit Reporting Act to strengthen personal privacy protections, and we plan to work with the Congress to fashion needed amendments. The Committee, in addition, has urged companies providing consumer goods and services to adopt, voluntarily, a code of fair information practices for records containing personal information not covered by the Fair Credit Reporting Act. Rather than wait for further study and possible Congressional hearings, the voluntary approach will assure early action in behalf of the consumer. The Committee also formally supports amending the Bank Secrecy Act to provide stronger privacy safeguards for personal information maintained by financial institutions.

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In the last session of Congress two major Administration-backed privacy initiatives were enacted into law. The first was the Family Educational Rights and Privacy Act of 1974, signed by President Ford on August 21, 1974, which extended privacy protections to educational records maintained by public schools and colleges and universities receiving Federal funds. The second was the Privacy Act of 1974, signed into law by the President on December 31, 1974, which provides landmark privacy protections for the millions of Americans who are subjects of records maintained by most Federal agencies. For your reference, I am enclosing a Fact Sheet and Presidential Statement on this Act. It was not possible, however, for the Congress to act on privacy legislation advanced by the Administration affecting criminal justice information and tax returns. These privacy initiatives and several others will be pursued in the next session of Congress.

It should be apparent, therefore, that significant progress has been made by the Administration in undertaking a new beginning with respect to protecting personal privacy. The record speaks for itself. Mr. Buchen needs no defense of his commitment to the protection of personal privacy, and I am disappointed that you would inject an ad hominem element in your letter. I shall welcome your continued interest and cooperation as we enter what I hope will be a year of further accomplishment.

Sincerely yours,

Douglas W. Metz
Acting Executive Director

DWM/fme

Enclosures - 3

bcc: Honorable Philip W. Buchen

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-139965

Your letters of June 7, November 5, and December 19, 1974, forwarded for our comment letters from Mr. David P. Weinberger of West Miami, Florida, questioning the propriety of Federal contracts with certain consumer credit reporting agencies in light of 5 U.S.C. § 3108, the so-called "Anti-Pinkerton Act," which provides that --

> "An individual employed by the Pinkerton Detective Agency, or similar organization, may not be employed by the Government of the United States or the Government of the District of Columbia."

By way of background, our correspondence with Mr. Weinberger in this area dates back to mid-1971. In July 1972, Mr. Weinberger questioned a proposal by the Department of Health, Education, and Welfare (HEW) to utilize Retail Credit Company of Atlanta, Georgia, to "spot welfare cheaters and find deserting fathers." Since the matter appeared to involve the proposed award of a Government contract, we began development of the case in accordance with our bid protest regulations, 4 C.F.R. §§ 20.1 et seq. HEW subsequently informed us that it did not intend to be a party to any such contracts, and that discussions had centered around possible arrangements between credit reporting agencies and State or local governments to provide information concerning the income of welfare recipients. In this context, the matter was outside our bid protest authority and, on August 30, 1972, we so advised Mr. Weinberger.

Mr. Weinberger's subsequent letters to you, to various officials of the General Accounting Office (GAO), and to several other Government agencies, have advanced the contention that the Anti-Pinkerton Act prohibits the Federal Government from employing certain credit reporting agencies, most specifically Retail Credit Company. He claims that Retail Credit is in reality a "detective agency" within the meaning of the Act, and details a number of controversies involving the company in recent years (several of which were reported by columnist Jack Anderson in the Washington Post, December 8, 1971). He also contends that the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 et seq. (FCRA), was not intended to modify the Anti-Pinkerton Act, that 15 U.S.C. § 1681f limits the kinds of information credit reporting agencies may

lgk

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furnish to governmental entities, and that "investigative consumer reports" as defined in 15 U.S.C. § 1681a(e) violate the Anti-Pinkerton Act.

The original Anti-Pinkerton Act was enacted as part of the Sundry Civil Appropriation Act of August 5, 1892, 27 Stat. 368. It was made permanent the following year by the Act of March 3, 1893, 27 Stat. 591. The legislation resulted from congressional concern over the use of private detectives as armed guards by private industry in the labor disputes of the 1880's and 1890's. It appears that Pinkerton detectives were frequently used as strikebreakers and labor spies, a practice which became an emotionally charged issue and gave rise to acts of violence. The Act was given its present wording by the 1966 recodification of title 5, United States Code, Pub. L. No. 89-554, 80 Stat. 378, 416. Many bills have been introduced over the years to repeal or modify the Act but all have failed of enactment. Examples are: H.R. 11743, 86th Cong.; H.R. 7865, 87th Cong.; S. 1543, 88th Cong.; S. 3224, 89th Cong.; S. 2740, 92d Cong.; H.R. 15091, 92d Cong.; H.R. 1433, 93d Cong. A comprehensive discussion of the origins of the Act is contained in S. Rep. No. 447 (to accompany S. 1543), 88th Cong., 1st Sess. (1963).

To our knowledge, the Anti-Pinkerton Act has never been interpreted or discussed in a reported decision of any court. Over the years, however, we have had frequent occasion to consider the Act in rendering decisions on the propriety of expenditures for Government contracts. In this manner, a small body of law has evolved. Since, in your letter to Mr. Weinberger of June 7, 1974, you expressed the desire to be advised on the applicable law, we are providing the following summary of the principles developed through our decisions.

(1) The Act applies to contracts with "detective agencies" as firms or corporations as well as to contracts with or appointments of individual employees of such agencies. 8 Comp. Gen. 89 (1928).

(2) The Act prohibits the employment of a detective agency or its employees, regardless of the character of the services to be performed; the fact that such services are not to be of a "detective or investigative" nature is immaterial. Thus, detectives or detective agencies may not be employed in any capacity. 26 Comp. Gen. 303 (1946).

(3) The statutory prohibition applies only to direct employment; it does not extend to subcontracts entered into with independent contractors of the United States. 26 Comp. Gen. 303 (1946). It is clear from the legislative history of the original 1892 Act that Congress did not intend to reach subcontracts. S. Rep. No. 447, supra, at 3-6.

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(4) Although we have never defined "detective agency" for purposes of the Anti-Pinkerton Act, we have drawn a distinction between detective agencies and protective agencies, and have expressed the view that the Act does not forbid contracts with the latter. 26 Comp. Gen. 303 (1946); 38 Comp. Gen. 881 (1959). Thus, the Government may employ a protective agency, but may not employ a detective agency to do protective work.

(5) In determining whether a given firm is a detective agency, we must consider the nature of the functions it may perform as well as the functions it in fact performs. Two factors are relevant here--the firm's authority under its corporate charter and its powers under licensing arrangements in the states in which it does business. If a firm is chartered as a detective agency and licensed as a detective agency, then the fact that it does not actually engage in detective work will not permit it to escape the statutory prohibition. Since virtually every corporation inserts in its charter an "omnibus" clause ("engage in any lawful act or activity for which corporations may be organized in this state," or similar language), we have held that an omnibus clause alone will not make a company a detective agency. Rather, specific charter authorization is needed. 41 Comp. Gen. 819 (1962); B-146293, July 14, 1961.

(6) The Government may employ a wholly-owned subsidiary of a detective agency if the subsidiary itself is not a detective agency, even if the subsidiary was organized primarily or solely to avoid the Anti-Pinkerton Act. As long as there is prima facie separation of corporate affairs, we do not believe the Act compels us to "pierce the corporate veil." 41 Comp. Gen. 819 (1962); 44 Comp. Gen. 564 (1965).

Before discussing Retail Credit Company specifically, it is necessary to examine the status of credit reporting agencies generally. FCRA defines "consumer reporting agency" as --

". . . any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports."

15 U.S.C. § 1681a(f). "Person" is defined in 15 U.S.C. § 1681a(b) as "any individual, partnership, corporation, trust, estate, cooperative,

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association, government or governmental subdivision or agency, or other entity." This is consistent with prior judicial definitions. For example, the Supreme Court of Mississippi, in Retail Credit Company v. Garraway, 240 Miss. 230, 126 So. 2d 271, 273 (1961), defined "mercantile agency" as follows:

> "Mercantile agencies are establishments which are in the business of collecting information relating to the credit, character, responsibility, general reputation and other matters affecting persons, firms and corporations engaged in business. They furnish this information to subscribers of the agency for a consideration. The purpose is to procure such information concerning the trustworthiness of persons and corporations engaged in business as will enable their subscribers safely and properly to conduct business with strangers or distant customers."

It is true, as Mr. Weinberger has pointed out, that reporting necessarily implies investigation. There can be no question that credit reporting agencies engage in investigative work--this is how they get their information. The FCRA definition cited above recognizes this ("assembling . . . information"). In the past, we have used the term "investigative" somewhat synonymously with "detective" for the purpose of distinguishing an investigative agency from a protective agency. However, we have never maintained that a company which engages in, or is authorized to engage in, any investigative work whatsoever becomes by virtue of that fact a detective agency, and we do not believe that our decisions, read in their proper context, stand for this proposition. An adoption agency investigates its applicants yet it is certainly not a detective agency as the term is commonly understood. Cf. also Shpack d/b/a Equity Research Company v. Baretti, 349 N.Y.S. 2d 256 (1973), in which it was held that the business of discovering and recovering assets belonging to individuals which are either unknown to the owner or so old as to indicate that they have been abandoned or forgotten, did not amount to the business of a "private investigator" for purposes of the New York licensing statute.

We see the very enactment of FCRA as an indication of congressional recognition that credit reporting agencies do not fall within the Anti-Pinkerton prohibition--at least insofar as Government agencies are concerned--and in this sense we agree with Mr. Weinberger's assertion that FCRA was not intended to modify the Anti-Pinkerton Act. We must assume Congress was aware of the Act when considering and passing FCRA, yet there is no mention of it in FCRA or its legislative history. There are indications, however, that credit reporting agencies were viewed as something different from detective agencies. In a statement

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before the Subcommittee on Consumer Affairs, House Committee on Banking and Currency, during hearings on H. R. 16340 (an early House version of the FCRA), 91st Cong., 2d Sess. 184 (1970), Professor Arthur R. Miller, then of the University of Michigan School of Law, said --

> "We know that there is a high level of information exchange between the credit bureaus and detective agencies. . . . The data collected by a credit bureau . . . may be made available to governmental agencies, employers, insurance companies, detective agencies . . . ." (Emphasis added.)

Similarly, Professor Alan F. Westin, Columbia University Law School, in a statement before the Subcommittee on Financial Institutions, Senate Committee on Banking and Currency, Hearings on S. 823 (the Senate bill which was subsequently incorporated into H.R. 15073 as title VII, which in turn became title VI, Pub. L. No. 91-508, the FCRA), 91st Cong., 1st Sess. 83 (1969), noted that the credit reporting agency --

> ". . . is only one link in a private investigation and intelligence network that has expanded enormously in the United States in the past several decades."

Federal Trade Commission guidelines issued shortly after the enactment of FCRA provide as follows:

> "It should be noted that persons who compile reports on individuals for employment purposes are also covered by the Act. Accordingly, private detectives, detective agencies, and other personnel reporting entities are consumer reporting agencies when they prepare and furnish reports to be used in connection with hiring, promotion, retention (including an employee suspected of dishonesty), or reassignment of an individual." 117 Cong. Rec. 17418 (1971).

We note further that hearings on Commercial Credit Bureaus conducted in 1968 before the Special Subcommittee on Invasion of Privacy, House Committee on Government Operations, 90th Cong., 2d Sess., contain at pages 159 ff. an article on the extent to which Government agencies are authorized by law to make use of mercantile reporting agencies. There is no suggestion that such use is in contravention of law.

In line with the foregoing, it is our opinion that credit reporting agencies should not categorically be deemed detective agencies for purposes of the Anti-Pinkerton Act. Mr. Weinberger apparently concurs in this view, since he stated in a letter to our Deputy General

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Counsel, dated February 16, 1974, that "I am not suggesting for a moment that the United States may not do business with legitimate credit reporting firms." He went on, however, to state in the same letter:

> "I am suggesting that despite the unfortunate measure of respectability given to 'investigative consumer reports' by the Fair Credit Reporting Act, these types of information compilations are illegal within the meaning of 5 U.S.C. Sec. 3108, and that all other activity of firms and persons preparing such 'investigative consumer reports' should be proscribed under that Act."

This reveals what appears to be an underlying inconsistency in Mr. Weinberger's position. If investigative reports are illegal under § 3108, and if all credit reporting agencies by hypothesis do some investigative work, then all credit reporting agencies would have to be detective agencies for purposes of § 3108--a result we believe was contemplated neither by the Anti-Pinkerton Act nor by FCRA.

There is now for consideration the question whether Retail Credit Company falls within the scope of the general considerations discussed above. In addressing this question, we specifically refrain from commenting on the various improprieties on the part of Retail Credit cited by Mr. Weinberger since they involve matters beyond our jurisdiction, i.e., matters of State law, criminal law, and matters placed by statute within the responsibility of other agencies. In any event, they are of tangential significance to the question at hand, our concern being with the nature of Retail Credit's work rather than how it is performed.

To determine the nature of the work Retail Credit is authorized to do, we obtained a copy of its corporate charter. The "purpose statement" is set forth below in full:

> "The particular business in which it desires to engage is the making of reports to insurance companies concerning the propriety or advisability of accepting applications for insurance; the making of financial reports on all matters of financial concern to its patrons; the making of investigations for the furnishing of information in reference to investments and credits and the furnishing of such information; the doing of a general reporting business; the procuring and furnishing of information as to claims presented against or asserted by any person, firm, partnership or corporation; the issuance of such publications as may from time to time be deemed necessary or advisable in the conduct of its business; the lending of money upon such security as its corporate

authority may approve; the acquiring by purchase, exchange or otherwise of any real estate or interest therein, and personal property and choses in action, including stocks, bonds, deventures /sic/ and/or any other kind of security or securities issued by persons, partnerships or corporations, including securities issued by the Federal, State or Municipal governments, and also including all forms of securities issued by itself; and/or the notes of individuals or partnerships or corporations, secured or unsecured; also the right to lease any real estate or interest therein; to own and hold such properties or interest in properties, and to sell or otherwise dispose of the same; and in general to manage its properties or interest therein. Said corporation shall also have power to act as agent or broker for any person or persons in the transacting of any lawful business."

As noted above, we have never attempted to define "detective agency," nor have we spelled out exactly what a charter must contain in order to make a company a detective agency for purposes of § 3108. It certainly should not require the actual words "detective agency." In the absence of a suitable definition, some insight may be gained from what the term is understood to mean in contemporary usage. As one indication of this, we examined the listings and advertisements in the 1974 Washington, D.C., "yellow pages" telephone directory under the heading "Detective Agencies." (There is a separate heading for credit reporting agencies.) Functions vary somewhat but may be roughly grouped into two categories, protective services and investigative services. Protective services include such things as general armed guard service, industrial security (plant, store, etc.), and residential security (apartment, hotel, etc.). The following types of service may be called investigative: domestic (divorce, child custody), insurance, criminal, employment, accident, and location of missing persons. In addition, many agencies conduct polygraph examinations. In accordance with our prior decisions, even though protective services appear to be commonly furnished by detective agencies, we would not consider an agency furnishing solely protective services to be a detective agency for purposes of § 3108.

We understand that over 80% of Retail Credit's work is in the area of insurance investigating and reporting. Credit and employment reporting make up the remainder. Hearings on S. 823, supra, at 218. Under its "omnibus" clause ("act as agent or broker for any person or persons in the transacting of any lawful business"), Retail Credit could legally engage in all other types of investigative work, but this is not enough to invoke the Anti-Pinkerton prohibition. From the information available to us, Retail Credit's investigative functions are all commercial in nature. There appears to be no specific charter authority covering the other investigative areas commonly associated with private

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detectives (e.g., domestic, criminal, and accident investigation, and location of missing persons). Thus, to the extent that Retail Credit can be called an investigative agency, it is a specialized rather than a general one.

Our position regarding interpretation of the Anti-Pinkerton Act was set forth in detail in 44 Comp. Gen. 564 (1965). Although that case involved the relationship of a subsidiary to its parent corporation, we believe the approach reflected therein is pertinent here and hence quote at length from that decision:

> "In the first session of the eighty-eighth Congress, Senator McClellan introduced S. 1543 which proposed to repeal the anti-Pinkerton statute. The outright repeal provision of the bill was later amended to preclude only the employment of detective personnel for the purpose of providing investigative services; and as amended, the bill passed the Senate without much discussion. 109 Cong. Rec. 19743. In the House, the bill was not reported out of committee. The report on the bill from the Senate Committee on Government Operations, S. Rept. No. 447, dated August 20, 1963, is most instructive with respect to the circumstances leading to enactment of the anti-Pinkerton legislation in the first instance and as to the reasons for proposing its repeal. We quote the conclusions drawn by the Committee, appearing at page 7 of the report:
>
> "'As indicated earlier, S. 1543 would repeal a provision of law which was adopted originally 71 years ago, as a temporary limitation in an appropriation measure, and was made permanent the following year. Its enactment arose out of public and congressional concern resulting from the use by steel and railroad corporations of employees of the Pinkerton and other detective agencies as armed guards, labor spies, and strikebreakers in labor disputes, giving rise to bloodshed, loss of life, and destruction of property.
>
> "'An examination of the legislative history of the provision reveals that, in its original form, it would have prohibited the Federal Government and the government of the District of Columbia from entering into any contracts with firms or corporations which employed as armed guards employees of the Pinkerton or similar detective agencies. This provision was felt by the Congress to be too drastic, under the circumstances, since its effect might have been to require the Government to terminate various defense contracts then in effect. Furthermore, it was felt that such

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action, if appropriate, should be accomplished by positive legislation, following the reports and recommendations of Senate and House committees investigating these activities, rather than by means of a rider to an appropriation act.

"'Following numerous Senate-House conferences on the provision in question, the present language was adopted as a compromise, on the last day of the 1st session of the 52d Congress. The same provision was included in an appropriation measure the following year, without any floor discussion or debate.

"'Labor-management relations today are fully regulated by Federal and State statutes, and all of the Federal agencies concerned agree that there is no longer any justification for the continuance of this prohibition. Furthermore, it appears that it discriminates against those detective agencies which furnish both investigative and protective services, and is detrimental to the best interests of the Government, since it eliminates from competitive bidding numerous major detective agencies which would otherwise respond to Government invitations to bid on contracts for the furnishing of supplementary guard service. Finally, the committee has in its files, copies of letters from officials of various unions having contracts with the Pinkerton and similar agencies, endorsing the enactment of an identical bill which was pending in the House of Representatives in 1960, as well as information showing that the Pinkerton Detective Agency, as of 1960, had contracts with unions throughout the country.

"'It is the view of the committee that the present prohibition serves no useful purpose whatever, is detrimental to the best interests of the Government, and discriminates against a class of detective agencies without any justification. Accordingly, the committee urges enactment of S. 1543.'

"These conclusions and the underlying detailed review of the anti-Pinkerton measure history contained in the Committee's report leave no doubt but that whatever may have been the overriding policy considerations leading to enactment of this legislation some 70 years ago, they do not have much, if any, bearing on the current practice of the Government contracting for guard services of the type here involved.

"While we shall of course be required to apply the literal provisions of the anti-Pinkerton statute for so long as it remains in force, we do not consider that it embodies such elements of a policy nature as to require that we pierce the

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corporate veil in situations comparable to Wackenhut Corporation and its subsidiary Wackenhut Services, Incorporated. Application of the statute is itself somewhat ambiguous in light of the intention of the Congress which enacted it, even when considered in conjunction with the activities of the parent company. To further extend its application to the subsidiary company carries the injunction too far from its originally intended purpose for this Office to conclude that the parent and subsidiary are one and the same. We understand that a number of subsidiaries of detective agencies now hold and have held Government contracts for guard services. Overruling our prior decision would doubtless require protracted considerations of each case to ascertain the exact relationship of each contracting company to its parent and the question of whether or not its current contracts should be canceled at the cost of much disruption to the Government's business. We do not believe we would be justified in subjecting the Government to such disruption of its activities on the basis of so equivocal a policy as underlies the 70 year old anti-Pinkerton statute as it relates to the furnishing of guard services to the Government today."

We recognize that the question of Retail Credit's status is a close one. Based, however, on the information available to us, and keeping in mind that the prohibition of § 3108 is expressed in terms of "the Pinkerton Detective Agency, or similar organization," it is our opinion that to call Retail Credit Company a detective agency for purposes of § 3108 would require a degree of interpretation far beyond anything contemplated by the original statute.

Finally, Mr. Weinberger argues that 15 U.S.C. § 1681f limits the types of information credit reporting agencies may furnish to Government agencies. Section 1681f, entitled "Disclosures to governmental agencies," provides:

> "Notwithstanding the provisions of section 1681b of this title, a consumer reporting agency may furnish identifying information respecting any consumer, limited to his name, address, former addresses, places of employment, or former places of employment, to a governmental agency."

Section 1681b, entitled "Permissible purposes of consumer reports," provides:

> "A consumer reporting agency may furnish a consumer report under the following circumstances and no other:
>
> "(1) In response to the order of a court having jurisdiction to issue such an order.

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"(2) In accordance with the written instructions of the consumer to whom it relates.

"(3) To a person which it has reason to believe--

"(A) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

"(B) intends to use the information for employment purposes; or

"(C) intends to use the information in connection with the underwriting of insurance involving the consumer; or

"(D) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

"(E) otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer."

"Person" includes governmental agencies or subdivisions for purposes of FCRA. 15 U.S.C. § 1681a(b).

It seems clear to us that § 1681f was not intended to limit disclosures permissible under § 1681b. Rather, § 1681f permits limited disclosure in addition to § 1681b to agencies that presumably would not qualify for full reports under § 1681b. The legislative history of FCRA supports this reading. Thus, the provision that became § 1681f was explained in S. Rep. No. 91-517 (to accompany S. 823), 91st Cong., 1st Sess. 6 (1969), as follows:

"The disclosure of information to governmental agencies is limited to identifying type information such as name, address and place of employment unless the governmental agency has obtained a court order or is a bona fide creditor, insurer, employer, or licensor." (Emphasis added.)

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We hope the foregoing serves the purposes of your request. The enclosures to your letters are returned herewith.

Sincerely yours,

Comptroller General
of the United States

Enclosures

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FOR IMMEDIATE RELEASE JANUARY 1, 1975

Office of the White House Press Secretary
(Vail, Colorado)

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

The Privacy Act of 1974, S. 3418, represents an initial advance in protecting a right precious to every American-- the right of individual privacy.

I am especially happy to have signed this bill because of my own personal concern in the privacy issue. As Chairman of the Domestic Council Committee on the Right of Privacy, I became increasingly aware of the vital need to provide adequate and uniform privacy safeguards for the vast amounts of personal information collected, recorded and used in our complex society. It was my objective then, as it is today, to seek, first, opportunities to set the Federal house in order before prescribing remedies for State and local government and the private sector.

The Privacy Act of 1974 signified an historic beginning by codifying fundamental principles to safeguard personal privacy in the collection and handling of recorded personal information by Federal agencies. This bill, for the most part, strikes a reasonable balance between the right of the individual to be left alone and the interest of society in open government, national defense, foreign policy, law enforcement and a high quality and trustworthy Federal work force.

No bill of this scope and complexity -- particularly initial legislation of this type -- can be completely free of imperfections. While I am pleased that the Commission created by this law has been limited to purely advisory functions, I am disappointed that the provisions for disclosure of personal information by agencies make no substantive change in the current law. The latter in my opinion does not adequately protect the individual against unnecessary disclosures of personal information.

I want to congratulate the Congressional sponsors of this legislation and their staffs who have forged a strong bipartisan constituency in the interest of protecting the right of individual privacy. Experience under this legislation, as well as further exploration of the complexities of the issue, will no doubt lead to continuing Legislative and Executive efforts to reassess the proper balance between the privacy interests of the individual and those of society. I look forward to a continuation of the same spirit of bipartisan cooperation in the years ahead.

My Administration will act aggressively to protect the right of privacy for every American, and I call on the full support of all Federal personnel in implementing requirements of this legislation.

# # #

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JANUARY 1, 1975

Office of the White House Press Secretary
(Vail, Colorado)

NOTICE TO THE PRESS

The President has signed S.3418 the Privacy Act of 1974, the purpose of which is to safeguard individual privacy from misuse of Federal records, provide individual access to records, and establish a Federal Privacy Protection Study Commission.

Background

Concern with the uses and possible abuses of personally identifiable information compiled by governments and other institutions is of long standing. Computers and the increasing size and scope of institutions compiling such information has heightened the concern.

Establishment of the Domestic Council Committee on the Right of Privacy and the President's chairmanship of that Committee, while he was Vice President, highlight the concern of the Administration with this problem.

During the 93rd Congress a number of congressmen played key roles in the development of numerous privacy initiatives and the Administration has been actively engaged with Congress in developing legislation. S. 3418 is a compromise bill reflecting the Administration's position, the position of the Senate in S. 3418 and a key House bill, H.R. 16373.

Provisions of the Bill

The bill, generally, requires agencies to annually identify record keeping systems; establishes minimum standards for all systems which would regulate the process of accumulation of data as well as its security and use; permits an individual to gain access to his record and contest its accuracy; provides administrative and judicial machinery for oversight; and establishes a study commission.

Specifically, S. 3418 requires Federal agencies to:

-- permit an individual to examine records pertaining to him and to correct or amend these records

-- assure accuracy, currency, and security of records and limit record keeping activities to necessary and lawful purposes, and

-- be subject to civil suit for willful or intentional action violating individual rights under the act.

The bill provides that unless an individual otherwise consents, no agency shall disclose records except under specified conditions and only to persons and agencies, or for purposes expressly provided in the bill including:

-- to officers within the agency maintaining the records who need the records in their work

-- purusant to a "routine use" -- a use compatible with the purposes for which the records were collected -- following public notice and comment on the type of "routine use"

-- to the Bureau of the Census to perform their statutory functions

-- to the National Archives where preservation is warranted

-- to other agencies in connection with law enforcement activities under prescribed conditions

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-- to individuals when the health and safety of an individual is involved

-- to committees of Congress with jurisdiction

-- to the Comptroller General or pursuant to court order

-- when required by the Freedom of Information Act for statistical purposes if the information is not in a form by which an individual may be identified.

Each agency is required to keep a detailed accounting of all disclosures of records other than disclosures under the Freedom of Information Act, make the accounting available to the individual, inform the person to whom disclosure is made of any corrections made to the records disclosed, and retain the accounting for at least five years.

S. 3418 requires each agency to respond to a request by an individual for correction of a record pertaining to him within prescribed times, to provide procedures for an individual to contest an agency's refusal to correct a record and for noting the portions of records in dispute, and provides for judicial review of agency decisions on requests for correction of records.

S. 3418 further requires each agency to:

-- limit its record keeping to that which is relevant and necessary

-- inform individuals requested to provide information of the authority for the request, the purpose for collecting the record, the uses to which the records will be put, and the legal implications of not providing requested information

-- publish descriptive information on record systems

-- assure such accuracy, relevance, timeliness and completeness of records as is necessary to assure fairness to the individual and make reasonable efforts to meet such standards before each disclosure

-- maintain no record respecting exercise of first amendment rights, and

-- develop procedures to provide notice to individuals concerning certain disclosures, develop rules of conduct for those working with records, establish safeguards, provide notice of system changes, provide for disclosure of records to affected individuals and to facilitate an individual's review of the records on himself.

The bill permits judicial review of an agency's refusal to comply with a request for corrections of an individual's record; refusal to permit examination of a record pertaining to him; and for a failure to comply with the Act if he is injured thereby, and permits judicial in camera court inspection of records, de novo court review, assessment of litigation costs and attorney fees to successful litigants, and actual damages incurred by the individual.

The bill provides for criminal penalties and a fine up to $5,000 against officers and employees of agencies when such people have knowingly and willfully acted in violation of the bill. Exemptions from many of the provisions of the bill are permitted by the bill after promulgation of rules for records:

-- of the CIA and criminal justice agencies

-- comprised of investigatory material for law enforcement purposes

-- maintained for the protective services to the President

-- required to be maintained for statistical purposes

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-- for determining eligibility for Federal employment or security clearance if such disclosure would violate confidentiality, and

-- certain testing and examination and evaluatory material

S. 3418 requires the Office of Management and Budget to develop regulations to implement the bill and provide continuing oversight of the implementation of the bill.

S. 3418 establishes a two-year Privacy Protection Study Commission composed of seven members -- three appointed by the President and two each appointed by the Speaker of the House and the President of the Senate.

The Commission is required to conduct a study and review a wide range of public and private record systems and to analyze the relationship of such systems to constitutional rights, potential abuses, and standards established under the bill. The Commission is required to make general recommendations and to propose changes in laws or regulations on certain matters. The Commission is authorized to hold hearings, conduct inspections, issue subpoenas to compel attendance of witnesses or production of books or records, and administer oaths. The Commission may appoint an executive director and other personnel at rates not to exceed GS-18.

The bill restricts the use of Social Security numbers for identification; prohibits an agency from selling a mailing list unless authorized by law; and authorizes appropriation of $1.5 million for fiscal years 1975, 1976, and 1977 except that no more than $750,000 could be spent during any one fiscal year.

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December 30, 1974

To: Doug Metz

From: Phil Buchen

The files on our previous reply to David Weinberger are all there at the Privacy Committee.

Could you handle this, please?

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David P. Weinberger
5920 S.W. 16th Terrace
West Miami, Florida 33155

(305) 266-3461

GAO

December 20, 1974

Philip W. Buchen, Esquire
The White House
Washington, D.C.

Dear Mr. Buchen: re: federal use of 'inspection reporting' firms

I want to show you an example of why so many Americans have lost and are continuing to lose faith in their system of government. It is, I'm sorry to say, an event in which you are involved.

Your letter to me of May 17, herewith attached, pats me on the head for being a concerned citizen and assures me of a reply from the Comptroller General on an important question: are some federal contracts with 'credit reporting' agencies illegal as within the meaning of the "anti-Pinkerton Act," 5 USC 3108? There has been no reply from GAO despite a vigorous effort by this writer through Senator Lawton Chiles to get a meaningful response from GAO.

All this has occurred in the wake of Watergate and as privacy concerns by Americans grew to crisis proportions.

I'd like to think there's still a remedy: the courts. But the truth is that the United States, under the legal stewardship of John N. Mitchell, committed a highly improper act in U.S. ex rel. Polin v. Retail Credit Co., USDC, DC, 1971, USCCA, DC, 1972, by allowing two of its procurement officials, employees of the nominal defendant, to furnish affidavits to the defendant in order to defeat the relator's jurisdiction. I wonder if it's just co-incidence that West Publishing Company failed to report these memorandum opinions.

It is clear to me that you wanted to ride the privacy bandwagon for what you could get out of it, and not out of any sincere desire to see that the fundamental proposition of checks and balances is implemented as it must be to protect the American political system.

I have just completed the study of law over this precise issue because I view it as a point at which we must take action to avoid further abridgement of individual liberty. The discovery that the Miami branch office of the Federal Reserve Bank of Atlanta may draw "investigative consumer reports" on job applicants, when that industry is dominated by a monopoly with a criminal record and many other unsavory actions like intimidating state and federal legislative aides, is not an encouraging development. I think there is as much lack of sincerity about privacy matters in the Ford administration as there was in the previous national leadership disaster.

It does not please me to write anyone in the White House in such blunt words, but I challenge you to show me that they are unjustified by taking some kind of action to compel an answer from the General Accounting Office.

DPW/dpw copies: Morton Mintz, Wash. POST;
Paul G. Dembling, Esq., Gen. Counsel, GAO;
Hon. Lawton Chiles, US Senate

Yours in disgust,
David P. Weinberger
David P. Weinberger

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THE WHITE HOUSE

WASHINGTON

May 17, 1974

Mr. David P. Weinberger
5920 S. W. 16th Terrace
West Miami, Florida 33155

Dear Mr. Weinberger:

My apologies for taking so long to reply to your March 30 letter addressed jointly to the Comptroller General and to me. As I am sure you understand, launching an enterprise to deal with the full range of issues encompassed by the concept of informational privacy is no mean task.

Please be assured that the subjects covered in your letter will be looked into by at least one and perhaps several working groups of the Privacy Committee. Although the Committee's primary focus so far has been on the personal data collection practices of Federal agencies themselves, the Committee will also be concerned with agency contracting practices. Moreover, an entire working group is concentrating on ways of protecting the consumer interest in personal privacy and I would expect that group, in particular, to be receptive to the concerns you raise. I trust that you would not object if I made your letter available to them.

I shall forward a copy of this letter to Mr. Staats who will be responding to you separately. All of us who value personal privacy are grateful for the interest and support of concerned citizens like you.

Sincerely,

Philip W. Buchen
Executive Director
Domestic Council Committee
on the Right of Privacy

WASHINGTON, DC 20
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cc: Hon. Elmer B. Staats
Comptroller General