EXCERPT FROM JOURNAL

OFFICE OF LEGISLATIVE COUNSEL

16 MAR 1973

13. (Internal Use Only - LLM) Called Bill White, Legislative Reference Service, Office of Management and Budget, and learned that they had not undertaken any action on H. R. 4960 or S. 1142, pertaining to freedom of information. I told White that we were quite concerned with the ramifications of the legislation and he promised to keep our interests in mind.

cropping in the Atlantic, halfway between the main island of Puerto Rico and the Virgin Islands. Less than three by seven miles, this municipality of Puerto Rico is blessed with perfect weather, abundant wildlife, and pink and white sand. Over the last thousand years, currents and geography conspired to produce some of the finest coral formations in the entire world just off Culebra's coast.

Culebra's northwest peninsula serves as the target for offshore naval shelling; keys off Culebra's west coast are bombarded in air-to-ground operations. Two towns, Dewey and Clark, are within two to three miles of the targets. Some families live even closer.

The Navy asserts it protects Culebra's environment because its maneuvers keep man's despoilment to a minimum. Culebrans don't accept the premise that continuous bombing and shelling is a necessary price of preservation, and they challenge the Navy's record as protector.

Approaching Culebra by plane, one is struck by its beauty. Blue-green waters spread from shore. Dark swathes cut through a remarkably transparent sea, signaling enormous beds of coral below. Lagoons and lush green mountains, dotted with thousands of soaring birds, complete the picture of an idyllic natural wonderland. But as the plane circles closer, the Navy's contribution comes into view. Amid nesting sooty terns and some rare and endangered species of birds, including the nearly extinct Bahamian pintail, lie target tanks and gaping craters—the pock-marked scars of naval shelling.

Culebrans experience constant anxiety. The Navy boasts of its safety record: Only one civilian killed, another child disfigured while playing with a dud, and nine Navy personnel killed when their observation post on Culebra was mistaken for the target. But, sporadically, shells have landed throughout the community. One hit a cistern less than 50 yards from the Town Hall in Dewey. A Defense Department report concluded that the gross error rate at Culebra is "unduly high . . . where there are nonparticipants within the weapons' delivery range." The Navy officer in charge of World War II training at Culebra observed: "It is a miracle that more Culebrans have not been killed."

Besides posing a continuing threat to an entire community, Navy shelling and bombing destroyed irreplaceable coral and fish, as well as birds in great numbers. Even though President Theodore Roosevelt set aside Culebra's keys as a National Fish and Wildlife Refuge in 1909, he authorized the use of these islands for "naval . . . purposes."

Surrounding Culebra are some of the oldest living corals in the world, still in a state of climatic growth. They are breathtaking, as is the rich marine life they nurture. Naval training has taken its toll on both.

Culebra suffered an ecological disaster in 1970. The Navy, carrying out orders to rid Culebran waters of more than 30 years of accumulated duds, stacked all shells it could find on one of the most magnificent coral reefs in the entire Caribbean and then began detonating this ordnance.

After several smaller explosions destroyed considerable coral and massacred thousands of fish, angy Culebrans complained to Rafael Hernandez Colon, then Senate President and now Governor of Puerto Rico. He secured local counsel who went to federal court in San Juan on behalf of the Culebrans, seeking a temporary restraining order pending completion of an environmental-impact statement by the Navy as required by the National Environmental Policy Act.

When the matter came before Federal Judge Hiram Cancio on Dec. 7, 1970, the U.S. attorney representing the Navy persuaded the judge that his client would not conduct further explosions pending full review by the court and, consequently, that there was no immediate threat of irreparable harm.

At the very moment the Navy's counsel was giving these assurances—and unknown to him—a Navy demolition team pulled the pin for another ordnance-removal operation on Culebra's coral. When the Judge learned of the explosions, he immediately issued a temporary restraining order. For Culebra it was unfortunately late. A Navy study conceded that this explosion "left a crater 15 feet deep and 100 feet in diameter."

ALTERNATIVES STUDIED

In October, 1970, President Nixon signed a law directing the Secretary of Defense to study all possible training alternatives to Culebra. Three months later, Navy Secretary John Chafee signed a "peace treaty" agreeing to reduce activities on Culebra and to seek an alternative site.

When the congressionally directed study was published in April, 1971, showing that Culebra could be replaced, Secretary of Defense Melvin R. Laird promised the Puerto Ricans that he would transfer all Navy operations away from Culebra by no later than June, 1975. Pending release of a second congressionally mandated study that sought more detailed information on alternatives to Culebra, Secretary Laird reaffirmed his commitment in a Nov. 4, 1972, telegram to then Governor Luis Ferre. This was made public in Puerto Rico.

But on Dec. 27, 1971, Mr. Laird abruptly reversed himself and announced that Navy shelling at Culebra would continue indefinitely and at least until 1985. He claimed his reversal was based on a secret Navy study.

SUITABLE SITES FOUND

At the time it was assumed that this study found no suitable alternative to Culebra and that this information came to the Secretary after his November telegram to the Governor. When this study was declassified last month, however, Culebrans learned it concluded that a number of uninhabited island alternatives were "suitable for conduct of all of the required types of naval gunfire and aircraft-weapons exercises," and that at least one uninhabited site was admittedly superior to Culebra for Navy training. The study was dated Oct. 16, 1972—several weeks before Mr. Laird reaffirmed his commitment to terminate Navy shelling at Culebra.

The Culebrans and Puerto Rico returned to Congress in their pursuit of the promised peace. Sen. Howard H. Baker Jr. (R) of Tennessee and Hubert H. Humphrey (D) of Minnesota introduced S. 156, a bill to terminate all Navy operations at Culebra by no later than July 1, 1975, by ending Navy funds for such operations beyond this date. Thirty-three Senators now cosponsor S. 156. And during his confirmation hearings, the new Secretary of Defense, Elliot L. Richardson, agreed to review Mr. Laird's reversal.

DETERMINATION VOICED

All four men elected Governor of Puerto Rico throughout its history, representing three political parties, and the Mayor of Culebra, strongly endorsed S. 156. Shortly before taking office, Puerto Rico's newly elected Governor, Rafael Hernandez Colon, reacted to Secretary Laird's reversal with unbowed determination:

"So now it is up to the United States Congress to make a decision. My intention and that of the people of Puerto Rico is to stop the Navy from its arbitrary use of Culebra as a target-practice range. We'll persist in that position."

Culebra and all Puerto Rico continue to hope that Congress or Secretary Richardson or President Nixon will make good on the promise of the United States Government to end the shelling, but the legislative and political process is slow. In the meantime, shells and bombs continue to fall on Culebra.

DEDICATION TO MAYOR BRADLEY D. NASH

HON. GILBERT GUDE

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Monday, April 30, 1973

Mr. GUDE. Mr. Speaker, on April 14, 1973, the people of Harpers Ferry, W. Va., gathered to honor their mayor, Bradley D. Nash. A newly constructed flagpole with the American flag waving at its mast was dedicated to the mayor in recognition of the devoted service he has given the people of Harpers Ferry.

I was honored to have the opportunity to share in this ceremony at Harpers Ferry, where history, mountains and rivers flow together in majestic beauty. And I would like to call the attention of my colleagues to the generous gift Mayor Nash made to the National Park Service and to the people of America. Mayor Nash donated funds for the Park Service to sponsor an annual conference on the environment to be held at Harpers Ferry. Truly, Mayor Nash's gift is a reflection of his public awareness and service.

Mr. Speaker, I would like at this time to insert into the RECORD the comments made by the distinguished senior Senator from West Virginia, Jennings Randolph, at the dedication ceremony:

REMARKS BY SENATOR JENNINGS RANDOLPH (D.-W. VA.), CHAIRMAN OF THE COMMITTEE ON PUBLIC WORKS, U.S. SENATE, AT THE DEDICATION OF A FLAG STAFF IN HONOR OF MAYOR BRADLEY D. NASH AT HARPERS FERRY, W. VA., AT 11:00 A.M., ON SATURDAY, APRIL 14, 1973

The invitation for me to participate in the ceremony today was a welcome one for several reasons. It is a joy to return to our State, as spring skips across our mountain tops. As Helen Marshall said in a verse entitled, "April", "There is a feeling of promise in the Air."

In this instance, I am doubly pleased to be present because of my love for Harpers Ferry and the work that goes forward here.

A positive force in the development of this unique community is the man we honor today. I have known Bradley Nash for a long time. He is not only the chief elected official in Harpers Ferry, but he is a leader to whom people look with confidence.

Bradley combines the traits of intelligence, enthusiasm, energy and vision. Harpers Ferry has many historical and scenic assets to recommend it, but one of its greatest assets must surely be his Honor the Mayor, and the other good people who work together to strengthen this favored land.

My personal association with Harpers Ferry goes back many years. I am gratified to have been able to help in securing the recognition of the Federal government of its prominence as a historical site.

The history of Harpers Ferry goes deep into our Nation's past. Thomas Jefferson, the chief author of our Declaration of Independence, came here. George Washington, first President of our country, came here. General Robert E. Lee came here. Abraham Lincoln came here. I pause, as I feel we can almost hear their footsteps.

Harpers Ferry shared a vital role in the development of the United States, first as a frontier outpost and later as an important point on the trail west. Harpers Ferry is also remembered for the events that occurred here just over a century ago when social and

political questions of that crucial time were focused in this community by John Brown.

Many of the dilemmas faced not only then but now can be more fully understood, if not solved, by a study of the history of this area.

There is, therefore, a historical heritage here, a heritage that we recognized must be preserved as an important part of the American past. Harpers Ferry not only has much to tell about the maturation of the American nation, but from it we may partly learn how to cope with contemporary problems.

We owe much to the people within the National Park Service for the skillful, sensitive and enthusiastic manner in which they have approached the preservation of Harpers Ferry.

But Harpers Ferry is not an isolated memorial to the events that took place here in the past, regardless of the impact they had on the course of history. Harpers Ferry today is a living park. It is a historical community but it is one in which people live and labor in the 20th Century. It is also a training center for the National Park Service personnel who go from here to many parts of the country. Harpers Ferry also is centrally located in an area of great historic significance and scenic beauty. To the south and to the West, in our State, are two of our great national forests. There are also numerous other areas which have played roles in the development of our country.

Abraham Lincoln said, "we cannot escape history." Fortunately, Harpers Ferry does not desire to escape its past. That past is the basis for the future of this community; a future dedicated not only to teaching our American heritage, but to providing a place for Americans to escape from the routines of every-day life.

Hundreds of thousands of work-weary people will exchange at Harpers Ferry this year, their tedious tasks for an exhilarating visit here to refresh their physical bodies and renew lagging spirits. Following their sojourn here, they will return to their homes, a host of happy travelers with minds and souls restored.

With the support of the National Park Service and with the leadership of citizens like Bradley Nash, we are assured that Harpers Ferry has a future filled, with not only promise, but the realization of a better life.

ELIMINATING POVERTY BY REDEFINITION

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, April 30, 1973

Mr. RANGEL. Mr. Speaker, the Nixon administration is presently involved in an effort to eliminate poverty, not by attacking its root causes, but by merely changing its definition.

Apparently, the present defintion of what constitutes poverty will be modified by including in a family's total annual income all the noncash benefits they receive, such as food stamps, medicaid, and so forth.

By doing this, millions of people will suddenly be pushed above the income level now used to define poverty—$4,137 a year for a family of four.

The advantages that would be gained from this procedure are fairly obvious. The Nixon administration would like to be able to produce figures that demonstrate that the number of poor people in this country has dropped to a record low during the last 4 years.

The fallacy involved in defining poverty in this manner is pointed out in the following editorial that appeared in the Washington Evening Star. If noncash income is going to be counted as income for lower income Americans, then it should also be counted for middle- and upper-class Americans as well. If this was done, the administration would find the results to be quite embarrassing.

Poverty cannot be eliminated by redefinition—it can only be hidden by statistics to serve the interests of the Nixon administration.

The editorial follows:

JUGGLING POVERTY FIGURES

The federal definition of poverty, and the dollar statistics accompanying that definition, have never really been satisfactory. For one thing, they depend on rather arbitrary lines of demarcation. Today's official poverty definition applies to a family of four, not living on a farm, with an annual cash income of less than $4,137. It invites the question: Is the family with a $4,138 income not poor?

More is involved that than. As the Sixties progressed with sustained prosperity, the number of people classed as in poverty declined substantially, from nearly 40 million to 25 million. The decline might have been more dramatic, because the Sixties also saw the creation of a maze of federal subsidies for the poor, from food stamps and medicaid to manpower training and housing assistance. But these are non-cash subsidies, the Census Bureau only counts cash income in adding up the poor.

Now the word is out that the Nixon administration, through an interagency team, is quietly examining ways to recompute the income figures used to define poverty. No doubt the recomputations will include noncash income, with the result that several million more people will magically disappear from the poverty category.

Besides making everybody feel good at the White House, this analytical departure makes a certain amount of sense. As shown by a recent Congressional study of welfare disparities, there are plenty of families getting about $3,000 in cash each year and the equivalent of several thousand dollars more in multiple non-cash benefits. It seems strange to count these families as poor while exempting a $4,500 a year family that doesn't qaulify for other programs.

But there is another side to all this. As pointed out by Mollie Orshansky, HEW's redoubtable expert on the statistics of poverty, we have a huge middle and upper-middle class in this country, many of whom benefit enormously from non-cash income. Start with the expense account. Move on to company-paid health insurance, pension premiums, vacations and continuing-education plans. And then to commodity discounts many employees enjoy, and all the on-base privileges and subsidies handed to the military.

To be consistent, the Census Bureau would have to count non-cash income for all Americans. If it were ever done, it might well show an even wider gap than now appears to exist between America's high, middle and low-income groups. And that wouldn't make the White House happy at all.

FREEDOM OF INFORMATION

HON. JOHN E. MOSS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, April 30, 1973

Mr. MOSS. Mr. Speaker, on April 12, our colleague the gentleman from Pennsylvania (Mr. MOORHEAD) testified before a joint hearing by three Senate subcommittees on needed amendments to the Freedom of Information Act.

I commend the remarks to all Members of the House of Representatives and urge that they give unanimous support to this effort to improve one of the most important laws of the United States.

The text of the testimony follows:

FREEDOM OF INFORMATION

(Statement of the Hon. William S. Moorhead, Chairman, Foreign Operations and Government Information Subcommittee of the House of Representatives Before the Subcommittee of Administrative Practice and Procedure of the Senate Committee on the Judiciary Jointly with the Subcommittee on Separation of Powers of the Senate Committee on the Judiciary and the Subcommittee on Intergovernmental Relations of the Senate Committee on Government Operations in support of S. 1142 and H.R. 5425 to Amend the Freedom of Information Act)

Mr. Chairman, I greatly appreciate the opportunity to testify at this joint meeting of these important subcommittees today on a subject which is central to the basic concept of democracy. At no time in recent years has the problem of government secrecy so pervaded our political process. The tug-and-pull between the Executive and Legislative branches which is built into our system serves a useful function if normal checks and balances are operational and unimpaired.

No matter what political party is in control, the free flow of information necessary in a democratic society is not an issue of political partisanship. Administrations have historically abused their power to control public and Congressional access to the facts of government. Administrations of both parties have claimed some form of an "executive privilege" to hide information. The conflict is not on partisan political grounds but on Constitutional grounds between the legislative and executive branches of government. An indication of this is the fact that eight Republican members of our committee have cosponsored legislation to limit or restrict the use of "executive privilege."

But this administration has reversed the trend away from the most blatant abuses of "executive privilege". This administration has turned our system of government backward, back down the path which leads to an all powerful political leader—call him president, dictator or king—who arrogates unto himself the right to know and against the elected representatives of the people whether in a Parliament or a Congress.

A recent Congressional Research Service study made for the House Foreign Operations and Government Information Subcommittee points out that the growth of the claim of "executive privilege" to hide the facts of government really began in 1954 during the Eisenhower Administration. I would like to submit a copy of this study for your record.

Congressman John E. Moss, the former chairman of my subcommittee, was responsible for convincing three presidents to limtit the use of "executive privilege" to a personal claim of power, and the claim was used sparingly against the Congress by Presidents Kennedy and Johnson.

The CRS study reveals that President Nixon has, thus far, set an all-time record in utilizing the dubious doctrine of "executive privilege". It also shows that, despite his written assurance to our subcommittee in April, 1969 that he would adopt the same Kennedy-Johnson groundrules limiting its use, such rules have been violated by Administration subordinates at least 15 times.

I have always felt that, while the Executive has no inherent right to withhold anything from the Congress, a spirit of comity and recognition of the need for certain con-

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fidences and privacy between the branches has led the Congress to recognize privileged communications between the President and his closest advisors. This is the way it should be—but only if this spirit of cooperation is not abused by either branch.

Unfortunately, the present Administration has built a stone wall between itself and the Congress. This wall, much like the one in Berlin, has grown stone by stone until on March 12, 1973, Mr. Nixon capped it off with an amazing "blanket privilege" proclamation, extending to the entire Executive branch. As I understand the new theory, it applies to all past, present, and future White House aides who might be summoned to testify before Congressional committees. Thus, if a President wanted to keep secret the number of roses in the White House garden in the interests of national security, under the Nixon claim, he could invoke the privilege on behalf of his close "personal advisor", the White House gardener, and, according to a Justice Department witness before my subcommittee, this decision would not be subject to review by Congress or court. Such White House policies and claims are as ridiculous as their claims that "Executive privilege" is an historical doctrine that dates back 200 years.

Mr. Chairman, before turning to a discussion of freedom of information matters, I must comment on the amazingly arrogant performance by the Attorney General before this panel on Tuesday and on his exposition of the Administration's doctrine of the "divine right" of the Presidency. I submit that this is a doctrine of monarchial origin at best, or at worst, a totalitarian dogma espoused by "banana-Republic" dictatorships.

Our system of government places the ultimate power in the hands of the people. Congress is the people's representative in the exercise of that power for the public good. All of us have been elected by our constituencies and have taken an oath to carry out that solemn obligation. Unless they have changed the law school curriculum since my day, ours is still a government of laws, not men. I never thought the day would come when any Attorney General of the United States could have the audacity to proclaim that, in effect, Congress had no power to order any employee of the Executive branch to appear and testify before Congress if the President—in his almighty wisdom—barred such testimony.

Only two persons—the President and Vice President—of the millions who make up the vast bureaucracy of the Executive branch of our government are elected by the people of the United States. At that, they are elected indirectly through the Electoral College system and only once every four years. All other Executive branch officials are appointive—the result of Congressional action in the establishment and funding of Federal programs which they administer. This includes the countless number of faceless, politically-appointed bureaucrats as well as the faceless civil servants who exercise life-and-death power in administering Federal programs under authority delegated to the Executive by the Congress. They have always been and must always be responsible to Congress because they are the creatures of Congress—not the Executive. They are the servants of the people and the people's Representative—not their masters.

The Attorney General was the Administration spokesman chosen to assert the "divine right" of the Presidency. As we all recall, it was not too many months ago that many in this body raised serious questions during the hearings on his nomination concerning his qualifications for the office. It is ironic, in view of the sweeping claims he has enunciated here, that it was only after the President "permitted" his assistant, Mr. Peter Flanigan, to appear before the Judiciary Committee to discuss the Administration's handling of the ITT anti-trust case that the log-jam was broken and the Attorney General's nomination was finally cleared for floor action. If the "divine right" doctrine had been in effect last year, it might be that someone else might be warming the seat of the Attorney General's chair today.

As the chairman of an investigating subcommittee of the House Government Operations Committee, I submit that it is absolutely essential for the Congress to have full access to all information and all Executive branch employees if we are to be able to perform our vital role as a "watch-dog" (with teeth) to make certain that the Representatives of the people are able to carry out our oversight duties as well as to perform our legislative functions required under the Constitution.

While the thrust of these hearings is the right of Congress to receive information from the Executive, I am most pleased that this panel is also considering the public's "right to know" what its government is doing. In this regard, I wish to now turn to a discussion of S. 1142 and H.R. 5425, amendments to the Freedom of Information Act, which I have sponsored in the House with some 42 other Members of both parties and which the chairmen of these three Senate subcommittees and other distinguished Senators are sponsoring over here.

Just above seven years ago, the Congress passed the Freedom of Information Act. In many ways this is an historic piece of legislation, because for the first time it was legally recognized that Government information is public information available to everybody without the need to show a special interest or need to know. This was a unique legislative proposition which, as far as I know, is not yet recognized anywhere else in the Western world. It is my understanding that Canada, Australia, and some Western European countries are now closely studying our Freedom of Information Act.

While the Freedom of Information Act presumed the public availability of *all* government information, it also recognized that some information must necessarily be withheld from the general public because its release could truly damage the national defense or foreign policy, or because release of the information could compromise individual privacy, abridge a property right, inhibit a law enforcement investigation, or seriously impede the orderly functioning of a government agency. In order to provide the fullest possible access to public records, however, the Congress clearly put the burden on the government to prove the necessity for withholding a document and clearly indicated that an exemption from public release of a document was permissive and not mandatory.

Some five years after the effective date of this act, the House Foreign Operations and Government Information Subcommittee held comprehensive investigatory hearings on the administration of the Freedom of Information Act. Our fourteen days of hearings and other investigative work showed conclusively that the administration of the Freedom of Information Act by the Executive branch fell seriously below the standard expected by the public and the Congress. The major problem areas fell into the following categories:

(1) the Executives's refusal to supply information by use of the exemptions in the Act was the rule rather than the exception;

(2) long delays in responding to requests often made the information useless once provided;

(3) delaying tactics during litigation extended both the time and the costs to the individual citizen beyond reason; and

(4) lack of technical compliance with the requirements of the Act, as interpreted by the agency, often led to a refusal to supply requested information.

In sum, Mr. Chairman, the Congress mandated that the Government supply all requested information to the public except within certain limited areas of permissive exemption. The Executive branch has generally rejected this basic mandate and, instead, has relied in large part on bureaucratic subterfuge to defeat the purposes of the Act.

I should state, however, that the picture is not all black. The Government Operations report of last September (H. Rept. 92–1419), based on our hearings, recommended a number of remedial administrative reforms. I am pleased to note that many agencies have already adopted some of them. However, administrative reforms within the agencies are not enough. Experience with the Freedom of Information Act shows the need for substantive amendments to the Act itself to strengthen and clarify its provisions. They are contained in the legislation now before the subcommittee.

SECTION-BY-SECTION ANALYSIS OF S. 1142 AND H.R. 5425

Mr. Chairman, let me now turn to a discussion of the major provisions of this measure—S. 1142 and H.R. 5425.

Section 1 (a) provides that agencies must take the affirmative action of publishing and distributing their opinions made in the adjudication of cases, their policy statements and interpretations adopted, and the administrative staff manuals and instructions which are available to the public. The present requirement that this information be made available for inspection and copying has not been adequate inducement to most agencies to actually make this information available in useful form.

Section 1(b) provides that agencies will be required to respond to requests for records which "reasonably describes such records." This substitutes for the present term "identifiable records" which some agencies have interpreted as requiring specific identification by title or file number—generally unavailable to the person making the request. I feel that any request describing the material in a manner that a government official familiar with the area could understand is sufficient criteria for identification purposes.

Section 1(c) provides for a specific time period for agency action on freedom of information requests, The present act contains no such time limits for the government to respond. The hearings showed that many requests went unanswered for periods of thirty days to six months. This new section will require the agency to respond to original requests within 10 working days and appeals of denials within 20 working days. These time periods are based on portions of Recommendation No. 24, issued by the Administrative Conference of the United States after a study of the Act in 1971. Under our proposed new section the agency is not required to actually forward the information within the ten-day period, for we recognize that in many cases the requested information may legitimately take more time to obtain from regional offices. However, the agency will be required to respond within ten days—either by making the information available or indicating whether or not the information will be made available as of a certain date; if the determination is that it cannot be provided, the agency response must state the specific reasons. Administrative appeals must be acted upon within the twenty-day limit. Two agencies, the Departments of Health, Education, and Welfare and Justice, have already amended their regulations to require responses within the ten-day period, as recommended. I feel that other agencies will not be burdened by such a statutory requirement.

Section 1 (d) clarifies the present requirement that the District courts examine contested information *de novo*, by requiring that

in *all* cases the *de novo* examination include an examination of the content of the records *in camera* to determine if the records must be withheld under the exemption or exemptions claimed by the agency. A second requirement specifically directed to the present section 552 (b) (1) of the Act directs the courts to look into the contents of documents considered exempt for reasons of national defense or foreign policy in order to determine if the contested documents should, in fact, be withheld under this exemption. This new section is made necessary by the Supreme Court decision in *EPA* v. *Mink* (410 U.S. ——) decided on January 22, 1973. In this case the Court held that judges may not examine *in camera* classified documents and thus exempt under section 552 (b) (1) and need not, at their discretion, examine the contents of documents claimed exempt under section 552 (b) (5).

The import of this decision is to allow the government to claim, merely by affidavit, that certain material is exempt from the public. This would effectively destroy the judicial oversight so necessary to the adequate functioning of the Freedom of Information Act. Original sponsors of the freedom of information legislation have always felt that the *de novo* requirement in the Act required a true examination of the records by the courts. This amendment will clearly spell out that original Congressional intent and requirement.

It has been argued that this requirement might put an excessive burden on the courts if they are forced to examine each contested document. I do not think this is the case. During five years of litigation under the Act, the District courts have evidenced no problems in examining the contested documents claimed exempt by Federal agencies under sections 552(b) (2) through (9). While there has been a reluctance to examine in camera those documents classified for alleged "national security" reasons, I do not feel that the requirement of judicial examination will place any unnecessary burden on the courts. As many of us in the Congress realize, the security classification system is a nightmare of inconsistency, over-classification and over-protection of many documents which, if made available to the public, would only expose official incompetence rather than official secrets. If the Freedom of Information Act is to achieve its desperately needed level of effectiveness, the judgments of the Federal agencies must be subject to meaningful oversight both by Congress and the courts.

Section 1(e) deals with foot-dragging by Federal agencies in freedom of information litigation. The problems encountered by administrative delays in response to requests has been compounded by delaying tactics during litigation. Under the Federal Rules of Civil Procedure the government is allowed 60 days to respond to complaints. However, a study made for our hearings of cases filed in the U.S. District Court for the District of Columbia showed that, in 20 out of 31 cases, the first responsive motion by the government was not filed even within the 60-day limitation, one case taking 137 days for the government to respond. Theoretically, the government should be able to respond to a complaint in very short time, for it should be assumed that if the administrative appeal denial was properly made, the defendant agency had already fully researched the law and developed a sound case for the denial.

Under a 1969 memorandum of the Attorney General, all administrative denials which could result in litigation, in the opinion of the agency, must be discussed with the Office of Legal Counsel of the Department of Justice—prior to issuing the final denial. Thus, both the agency and the Department of Justice should be ready to defend an action by the time the administrative process is completed. For this reason, this legislation would require the government to respond to complaints within 20 days—the same time allotted private parties under the Federal Rules of Civil Procedure. The amendment would also allow the courts to award costs and attorneys' fees to successful private litigants. One of the bars to litigation under the Act is the high cost of carrying through a Federal court suit. There is ample precedent in civil rights cases for the award of costs and fees to prevailing parties, and I feel that this authority in the hands of the court would clearly be in the public interest.

As I have previously stated, Mr. Chairman, the tactics often employed to defeat the purposes of the Freedom of Information Act include delay, unreasonable fees, and unreasonable identification requirements under subsection (a) of the present act as well as overly restrictive and often incorrect interpretations of the exemption provisions in subsection (b) of the Act.

We are hopeful that the amendments to subsection (a) of the Act will correct most of the procedural abuses. The amendments to subsection (b) which I will now discuss are designed to clarify the original intent of the Act by limiting, as much as possible, the types of information which can properly be withheld by Federal agencies.

ANALYSIS OF SECTION 2

Section 2(a) of S. 1142 & H.R. 5425 amends present subsection (b) (2) by clarifying the original intent of Congress that only internal personnel rules and internal personnel practices are exempt from mandatory disclosure. Some agencies have interpreted the current language as exempting internal personnel rules and all agency practices. A new provision has also been added which further restricts the scope of the exemption by exempting only those internal personnel rules and internal personnel practices, the disclosure of which would "unduly impede the functioning of such agency." This additional language will further restrict the types of information that can be claimed by an agency as being exempt from disclosure.

Section 2(b) of the bill amends present subsection (b) (4) by clarifying the present vague language in the Act. Under the proposed new language, the exemption would apply only to trade secrets which are "privileged and confidential" and financial information which is "privileged and confidential." The present section in the Act has been interpreted by the Department of Justice to exempt information which may be considered trade secrets, confidential financial information, other types of nonconfidential financial information, and other information neither confidential nor financial but which was obtained from a person and considered "privileged."

Section 2(c) of the bill amends present section (b) (6) by limiting its application to medical and personnel "records" instead of "files" as in the present Act. This will close another loophole we have noted in our studies whereby releaseable information is often co-mingled with confidential information in a single "file" and therefore all information contained in that "file" has been withheld.

Section 2 (d) of the measure amends present section (b) (7) of the Act by substituting "records" for "files" as in the prior amendment. The new section would also narrow the exemption to require that such records be compiled for a "specific law enforcement purpose, the disclosure of which is not in the public interest." It also enumerates certain categories of information that cannot be withheld under this exemption such as scientific reports, test, or data; inspection reports relating to health, safety or environmental protection, or records serving as a basis for a public policy statement of an agency, officer or employee of the United States, or which serve as a basis for rulemaking by an agency.

The present investigatory file exemption is often used as a "catch-all" exemption by some Federal agencies to exempt information which may otherwise be available for public inspection, but which is held within a "file" considered to be investigatory. The new language will protect that information necessary to be kept confidential for legitimate investigatory purposes, while requiring the release of that information which, in itself, has no investigatory status other than its inclusion within a so-called investigatory file.

Subsection (c) of the present Act would also be strengthened by language in S. 1142 and H.R. 5425. The present section merely states that ". . . This section is not authority to withhold information from Congress." Additional language has been added in these amendments to clarify the position that Congress, upon written request to an agency, be furnished all information or records by the Executive that is necessary for Congress to carry out its functions.

Finally, a new subsection (d) would be added to the present Act. Section 4 of the bill establishes a mechanism for Congressional oversight of the Freedom of Information Act by requiring annual reports from each agency on their record of administration of the Act, requiring the submission of certain types of statistical data, changes in regulations, and other information by Federal agencies that will indicate the quality of administration of their information programs.

Mr. Chairman, I am convinced that these amendments can help reverse the dangerous trend toward "closed government" that threatens our free press, our free society, and the efficient operation of hundreds of important programs enacted and funded by Congress. It will help restore the confidence of the American people in their government and its elected leadership by removing the veil of unnecessary secrecy that shrouds vast amounts of government policy and action.

We must eliminate, to the maximum extent possible, government preoccupation with secrecy because it cripples the degree of participation of our citizens in governmental affairs that is so essential under our political system. Government secrecy is the enemy of democracy. Secrecy subverts, and will eventually destroy any representative system.

The enactment of this legislation in this Congress will make it far more difficult for the Federal bureaucrat to withhold vital information from the Congress and the public.

NEWSMEN, NOT GOVERNMENT, LIFTED THE WATERGATE

HON. FRANK THOMPSON, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, April 30, 1973

Mr. THOMPSON of New Jersey. Mr. Speaker, we have all been astonished and dismayed at that series of events which have collectively become to be known as the Watergate scandal. I have refrained from making any public commentary on these events in the knowledge that the facts are being brought to light by some of the most distinguished investigative reporting we have witnessed in modern times.

Act takes effect, any department or agency (or officer thereof in his official capacity) is a party to a suit involving functions transferred to the Justice Department, then such suit shall be continued by the Justice Department. No cause of action, and no suit, action, or other proceeding, by or against the Treasury Department and the State Department (or officer thereof in his official capacity) functions of which are transferred by this Act shall abate by reason of the enactment of this Act. Causes of actions, suits, actions, or other proceedings may be asserted by or against the United States or the Justice Department as may be appropriate and, in any litigation pending when this Act takes effect, the court may at any time, on its own motion or that of any party, enter an order which will give effect to the provisions of this paragraph.

(d) Such further measures and dispositions as the Director of the Office of Management and Budget shall deem to be necessary in order to effectuate the transfers provided in this section shall be carried out in such manner as he may direct and by such agencies as he shall designate.

By Mr. SPARKMAN (for himself and Mr. TOWER) (by request):

S. 1139. A bill to amend the Urban Mass Transportation Act of 1964. Referred to the Committee on Banking, Housing and Urban Affairs.

Mr. SPARKMAN. Mr. President, I introduce for myself and Senator TOWER (by request) a bill to amend the Urban Mass Transportation Act of 1964.

This bill is recommended to the Congress by the Secretary of the Department of Transportation.

The proposed bill would make several significant changes in the 1964 act. They are designed to provide greater resources for and flexibility in the administration of the Federal program of assistance to mass transportation systems serving the urban areas of the nation and will enable us to aid localities in a more responsive manner. These proposed amendments would not change the basic substance or direction of the Federal urban mass transportation program.

Section 1 of the bill states that it may be cited as the "Urban Mass Transportation Amendments of 1973."

Section 2 of the bill increases from two-thirds to 70 percent of the maximum share of the cost of an urban mass transit capital improvement project which the Federal Government is authorized to contribute. This change will serve to equalize the Federal share of project costs available for both highway and transit projects.

Section 3 of the bill would amend section 4 of the 1964 Act to increase the amount authorized for obligation for urban mass transportation improvement projects from $3.1 billion to $6.1 billion. This request for an increase of $3 billion is designed to fulfill the purpose stated in section 4(d) of the 1964 Act of assuring program continuity and orderly development of new projects by providing at least $10 billion for urban mass transportation over a 12-year period. Early availability of this authority is essential in order that localities can undertake the long and difficult process of planning, developing, and financing major urban mass transportation improvement projects with confidence that they will be able to obtain a binding Federal commitment when they are actually ready to commence the projects.

Section 4 of the bill would amend section 9 of the 1964 act to increase from two-thirds to 70 percent the share of the cost of technical study grant projects which the Federal Government is authorized to contribute. Section 4 would also amend section 9 to clarify the authority to undertake projects for the evaluation of completed projects as a part of the technical sutdy activity.

Section 5 of the bill would amend section 10 of the 1964 act to remove several restrictions which undesirably limit the manner in which funds available to assist in improving the skills of persons employed in managerial positions in the transit industry may be distributed. The new flexibility which the bill would permit would enable the Department to allocate grants to those areas where the need for training is greatest.

Section 6 of the bill would amend the 1964 act to delete provisions which no longer have any significant operative effect and would renumber several remaining sections in order to clean up the act.

By Mr. SPARKMAN (for himself and Mr. TOWER):

S. 1140. A bill to prohibit the making of clad strip from which slugs can be cut for use in coin operated machines and to prohibit misrepresentation as to proof and uncirculated coins. Referred to the Committee on Banking, Housing and Urban Affairs.

Mr. SPARKMAN. Mr. President, for myself and for Senator TOWER, I send to the desk a bill to prohibit the making of clad strip from which slugs can be cut for use in coin operated machines and to prohibit misrepresentation as to proof and uncirculated coins. This legislation has been recommended to us by the Secretary of the Treasury. In general the purpose of the proposed legislation is to: first, prohibit, except under the authority of the Secretary of the Treasury, the importation, manufacture, possession, sale or use of clad strip from which slugs can be cut susceptible of use in coin operated machines, and second, prohibit falsely representing that packages of U.S. coins are proof coin or mint sets prepared by a U.S. Mint.

By Mr. SPARKMAN (for himself and Mr. TOWER):

S. 1141. A bill to provide a new coinage design and date emblematic of the bicentennial of the American Revolution for dollars and half-dollars. Referred to the Committee on Banking, Housing and Urban Affairs.

Mr. SPARKMAN. Mr. President, I send to the desk for myself and Mr. TOWER a bill to provide a new coinage design and date emblematic of the bicentennial of the American Revolution for dollars and half-dollars. This bill is recommended to the Congress by the administration. In general the administration believes it would be highly appropriate and desirable to recognize the bicentennial of the birth of the United States on its coinage. The proposed legislation is designed to accomplish that purpose.

By Mr. MUSKIE (for himself, Mr. BIBLE, Mr. CHILES, Mr. EAGLETON, Mr. GRAVEL, Mr. HART, Mr. HUGHES, Mr. HUMPHREY, Mr. JAVITS, Mr. KENNEDY, Mr. METCALF, Mr. MONDALE, Mr. PERCY, and Mr. RIBICOFF):

S. 1142. A bill to amend section 552 of title 5, United States Code, known as the "Freedom of Information Act." Referred jointly, by unanimous consent, to the Committee on the Judiciary and the Committee on Government Operations.

FREEDOM OF INFORMATION ACT

Mr. MUSKIE. Mr. President, I introduce today a bill to amend the Freedom of Information Act of 1967 and ask unanimous consent that it be referred to the Committee on the Judiciary and the Committee on Government Operations.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MUSKIE. Mr. President, these amendments which are cosponsored by 13 Senators from both sides of the aisle respond to a call many of us have heard for full implementation of the people's right to know the way in which they are governed. This bill, the result of intensive investigation in the 92d Congress by Representative WILLIAM MOORHEAD'S Subcommittee on Foreign Operations and Government Information, is a major contribution to answering that demand.

We are the best-informed of nations and the worst-informed. Americans in 1973 have access to more data, statistics, studies and opinions than the citizens of any other democracy, including their own, have ever had before. In theory, our people have available to them all the information they need to make wise and intelligent choices on public policy.

In practice, however, the flow of vital information from the governors to the governed is controlled and restricted by considerations that are alien to our concept of open democracy. The Executive asserts the power to withhold from the people and from the Congress some or all of the expert advice it receives and acts on. A President or his spokesman can make public those facts which best support a decision he has already made and can conceal arguments for alternatives he has rejected.

One branch of the Armed Forces can keep its research secret from the others, putting its competitive drive for appropriations ahead of the public interest in efficiency. Officials in charge of regulating prices or communications or pollution or consumer safety can be subjected to secret influences whose power to affect decision is increased by their ability to operate behind closed doors and to lock their advice into closed files.

Arguments made in private may be persuasive. They may even be correct. But where the public interest is at stake, argument must be open so that it can be rebutted. To be enforceable in a society built on trust, decisions must be reached in a manner that permits all those concerned to have equal access to the decisionmakers.

These amendments go far to remove obstructions which many Federal agencies have put in the way of those citizens who seek to know. They provide that

judges shall question the reasons asserted by an executive agency for claiming the privilege of secrecy for its records and shall examine the records themselves to see how reasonable each claim is. They affirm the right of Congress to have access to the information on which the Executive deliberates and acts.

I am proud to bring this legislation before the Senate at the same time it goes before the other body. Together we can examine the problems which have arisen in implementing the sound purpose of the Freedom of Information Act and can work to strengthen that purpose and our democracy.

Mr. President, I ask unanimous consent that an analysis of these amendments and the text of the bill be printed in the CONGRESSIONAL RECORD at this point.

There being no objection, the analysis and bill were ordered to be printed in the RECORD, as follows:

ANALYSIS OF AMENDMENTS TO THE FREEDOM OF INFORMATION ACT OF 1967

Amendments to Section 552(a)—

(1) agencies would be required to "publish and distribute" their opinions made in the adjudication of cases, policy statements and interpretations adopted, and administrative staff manuals and instructions to staff that affect the public, rather than merely making them "available for public inspection and copying," as provided in the present law.

(2) agencies would be required to respond to requests for records which "reasonably describes such records." This language is substituted for the term "identifiable records," which has been used by the bureaucracy in many cases to avoid making information available.

(3) agencies would be required to respond to requests under the Act within 10 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of the request and within 20 days (with the same exceptions) on administrative appeals following denials to the requesting party. These time periods are the result of a 1971 study and recommendations on improving the operation of the Act as adopted by the Administrative Conference of the United States and would provide a positive mechanism to correct one of the most glaring deficiencies uncovered during oversight hearings—that of agency stalling and foot-dragging tactics to avoid public disclosure.

(4) the Government could be required by the courts to pay "reasonable attorney fees and other litigation costs" of citizens who successfully litigate cases under the Act. This amendment is directed toward another major deficiency of the present law revealed during the hearings—the high costs to the average citizen when attempts to obtain records under provisions of the Act are frustrated by arbitrary or capricious acts of the bureaucracy or by foot-dragging tactics. Such assessment would be at the option of the court and has been successfully used in numerous civil rights cases in past years.

(5) agencies would be required to file answers and other responsive motions to citizens' suits under the Act within 20 days after receipt. Under normal rules of Federal civil procedure, the Government is given 60 days to file such responses, although the private citizen has only 20 days to respond to Government motions; this amendment would plug a major loophole used by the Government and revealed in the hearings, involving cases where repeated filing of delaying motions by the Government stalled court consideration of Freedom of Information Act cases for as long as 140 days. Such stalling tactics make a mockery of the law and often make the information, if finally made available to the citizen, virtually useless to him.

(6) new provisions proposed to Section 552(a) would clarify the original intent of Congress in connection with the interpretation of the "de novo" requirements placed on the courts in their consideration of cases under the Act. Such amendment is made necessary by the Supreme Court's decision in the case of *Mink* v. *EPA*, (410 U.S. —) decided on January 22, 1973, when the Court held that judges *may not* examine *in camera* documents in dispute where the Government claims secrecy by virtue of exemption 552(b)(1), dealing with the national defense or foreign policy, and are *not required* to exercise such *in camera* judgment in cases involving exemption 552(b)(5), dealing with inter-agency or intra-agency memorandums. The amendments make it clear that Congress intended and still intends that "de novo" as used in the law means that since the burden of proof for withholding is on the Government, courts *must* examine agency records *in camera* to determine if such records as requested by the plaintiff in a suit under the Act, or any part thereof, should be withheld under any of the nine permissive exemptions of 552(b). It also makes it clear in cases where exemption 552(b)(1) is claimed by the agency, the court *must* examine such classified records to see if they are a proper exercise of such Executive Order classification authority and that disclosure of the information requested would actually be "harmful to the national defense or foreign policy of the United States."

Amendments to Section 552(b)—

(1) permissive exemption (b)(2) would be amended to require disclosure of information about an agency's internal personnel rules and internal personnel practices, so long as such disclosure would not "unduly impede the functioning of such agency."

(2) permissive exemption (b)(4) would be amended to modify the exemption for trade secrets by requiring that such types of information be truly privileged and confidential, as is already provided in the case of commercial or financial information under this exemption.

(3) permissive exemption (b)(6) would be amended to limit its application to medical personnel "records," instead of "files" as in the present law; this would close another loophole in the Act whereby releaseable information is often commingled with other types of information in a single "file", and therefore withheld.

(4) permissive exemption (b)(7) would also be amended to substitute the word "records" for "files" as in (b)(6), for the same reason—to curb agency commingling of information to avoid public disclosure. The amendment would also narrow the exemption to require that such records be compiled for a "specific law enforcement purpose, the disclosure of which is not in the public interest." It also enumerates certain categories of information that *cannot* be withheld under this exemption such as scientific tests, reports, or data, inspection reports relating to health, safety, or environmental protection, or records serving as a basis for a public policy statement of any agency, officer, or employee of the United States, or which serve as a basis for rule-making by an agency.

Amendment to Section 552(c)—

(1) the amendment proposed to Section (c) clarifies the position that Congress, upon written request to an agency, be furnished all information or records by the Executive that is necessary for Congress to carry out its functions. Language in the present law merely states that the Freedom of Information Act does not authorize "withholding of information from Congress."

New Section 552(d)—

(1) establishes a mechanism for Congressional oversight by requiring annual reports from each agency on their record of administration of the Act, requiring certain record of administration of the Act, requiring certain types of statistical data, changes in their regulations, and similar types of information.

S. 1142

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

SECTION 1. (a) The fourth sentence of section 252(a)(2) of title 5, United States Code, is amended by striking out "and make available for public inspection and copying" and inserting in lieu thereof ", promptly publish, and distribute (by sale or otherwise) copies of".

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

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

"(5) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall—

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

"(B) in the case of a determination not to comply with any such request, immediately notify the person making such request that such person has a period of twenty days (excepting Saturdays, Sundays, and legal public holidays), beginning on the date of receipt of such notification, within which to appeal such determination to such agency; and

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

Any person making a request to an agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with subparagraph (A) or subparagraph (C) of this paragraph. Upon any determination by an agency to comply with a request for records, such records shall be made available as soon as practicable to such person making such request."

(d)(1) The third sentence of section 552(a)(3) of title 5, United States Code, is amended by inserting immediately after "the court shall determine the matter de novo" the following: "including by examination of the contents of any agency records in camera to determine if such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) and the burden is on the agency to sustain its action."

(2) Section 552(a)(3) of title 5, United States Code, is amended by inserting the following new sentence immediately after the third sentence thereof: "In the case of

any agency records which the agency claims are within the purview of subsection (b)(1), such in camera investigation by the court shall be of the contents of such records in order to determine if such records, or any part thereof, cannot be disclosed because such disclosure would be harmful to the national defense or foreign policy of the United States."

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

SEC. 2. (a) Section 552(b)(2) of title 5, United States Code, is amended by inserting "internal personnel" immediately before "practices", and by inserting "and the disclosure of which would unduly impede the functioning of such agency" immediately before the semicolon at the end thereof.

(b) Section 552(b)(4) of title 5, United States Code, is amended by inserting "obtained from a person which are privileged or confidential" immediately after "trade secrets", and by striking out "and" the second time that it appears therein and by inserting in lieu thereof "which is".

(c) Section 552(b)(6) of title 5, United States Code, is amended by striking out "files" both times that it appears therein and inserting in lieu thereof "records".

(d) Section 552(b)(7) of title 5, United States Code, is amended to read as follows:

"(7) investigatory records compiled for any specific law enforcement purpose the disclosure of which is not in the public interest, except to the extent that—

"(A) any such investigatory records are available by law to a party other than an agency, or

"(B) any such investigatory records are—

"(i) scientific tests, reports, or data,

"(ii) inspection reports of any agency which relate to health, safety, environmental protection, or

"(iii) records which serve as a basis for any public policy statement made by any agency or officer or employee of the United States or which serve as a basis for rulemaking by any agency;".

SEC. 3. Section 552(c) of title 5, United States Code, is amended to read as follows:

"(c)(1) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section.

"(2)(A) Notwithstanding subsection (b), any agency shall furnish any information or records to Congress or any committee of Congress promptly upon written request to the head of such agency by the Speaker of the House of Representatives, the President of the Senate, or the chairman of any such committee as the case may be.

"(B) For purposes of this paragraph, the term 'committee of Congress' means any committee of the Senate or House of Representatives or any subcommittee of any such committee or any joint committee of Congress or any subcommittee of any such joint committee."

SEC. 4. Section 552 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) Each agency shall, on or before March 1 of each calendar year, submit a report to the Committee on Government Operations of the House of Representatives and the Committee on Government Operations of the Senate which shall include—

"(1) the number of requests for records made to such agency under subsection (a);

"(2) the number of determinations made by such agency not to comply with any such request, and the reasons for each such determination;

"(3) the number of appeals made by persons under subsection (a)(5)(B);

"(4) the number of days taken by such agency to make any determination regarding any request for records and regarding any appeal;

"(5) the number of complaints made under subsection (a)(3);

"(6) a copy of any rule made by such agency regarding this section; and

"(7) such other information as will indicate efforts to administer fully this Section;

during the preceding calendar year."

SEC. 5. The amendments made by this Act shall take effect on the 90th day after the date of enactment of this Act.

Mr. KENNEDY. Mr. President, James Madison once wrote:

Knowledge will forever govern ignorance, and a people who mean to be their own governors, must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy or perhaps both.

These words were quoted upon introduction and reporting of what is now the Freedom of Information Act, legislation intended to provide the citizenry with the "means of acquiring" information from its government.

Congress' overriding concern in passing the Freedom of Information Act—FOIA—was that disclosure of information be the general rule, not the exception. The act reversed previous law and practice in that it provided that all persons have equal rights of access and that the burden be placed on government to justify refusal to disclose information, not the person requesting it. Finally, the act allowed persons wrongfully denied access to documents the right to seek injunctive relief in the courts.

After almost 6 years of operation, the FOIA has not fulfilled Congress' objectives or aspirations. Bureaucrats who simply feel more comfortable laboring behind closed doors and officials who desire to cover up inefficiency, ineffectiveness, laziness, and even corruption have joined to frustrate the intent and circumvent the mandates of the act. Vague or ambiguous exemptions have been stretched to shield disclosure of even the most innocuous documents, while delays and runarounds are employed to dampen the ardor of public inquirers.

Clearly the time has come for a new look and update of the FOIA. The amendments developed from extensive hearings in a House Government Operations Subcommittee during the last Congress provide an excellent starting point to initiate this revision. I am pleased to join with Senator MUSKIE and others today in introducing these amendments.

The original FOIA was developed from extensive hearings and deliberations by the Senate Subcommittee on Administrative Practice and Procedure, which I now chair. Because the amendments being introduced here cover not only areas presently included in the FOIA, but also matters relating to disclosure of previously classified materials and to access by Congress to documents in agency files, a joint referral has been arranged to both the Judiciary and the Government Operations Committees. I will look forward to coordinating the efforts of my subcommittee wih those of Senators MUSKIE and ERVIN, so that we might develop unified positions with regard to the important problems addressed by these amendments.

By Mr. HUMPHREY:

S. 1143. A bill entitled the "Social Security and Medicare Reform Act of 1973." Referred to the Committee on Finance.

SOCIAL SECURITY AND MEDICARE REFORM ACT OF 1973

Mr. HUMPHREY. Mr. President, I am today introducing the Social Security and Medicare Reform Act of 1973. This legislation is designed to accomplish one prime objective: bring fairness to the social security and medicare systems.

Title I of this legislation would reduce and eventually eliminate the supplementary medical insurance deductible. Presently, this deductible requires a medicare patient to pay the first $60 of the hospital bill.

The Nixon administration has recently proposed that the $60 payment be increased to $85. I am opposed to such an increase. The Nixon administration's proposal would place an almost unbearable financial strain on the elderly—generally those persons without sufficient resources to pay the cost.

Under my legislation, the deductible would be gradually reduced and eliminated over a 5-year period. This legislation would recognize that the United States has a public commitment to good health care for its elderly—without depleting their resources or forcing them to pay extra for quality medical care.

Title II of my legislation eliminates the payment of the premium under the supplemental medical insurance program.

Once again, with the increased cost in the medical insurance premiums, the elderly have been forced to pay even more for getting sick. Almost every year, there is an incerase in the medical insurance premium. Last year, the Congress enacted a provision that would increase the premium as the cost of living increases. It seems that our Government wants to play a cruel hoax on the elderly. On one hand, the elderly receive a cost of living increase in social security benefits; on the other, the cost of their medical insurance is also increased.

I think it is time to call a halt. It is time to be financing more of this cost from general revenues—not asking the elderly, most of whom have fixed incomes, to bear the burden of inflation.

Title III of the legislation would begin a system of one-third general revenue financing for the social security system. This amendment changes the financing mechanisms of social security from the present excessively regressive payroll tax to a method that is at least more equitable, and also maintains the actuarial integrity of the trust fund. It

means that one-third of total cost of social security would come from general funds of the Government. It means that the tax burden on low-income and moderate income families will be reduced.

At one time, it made sense to finance social security benefits entirely from the payroll tax. But lately, with the welcome expansion of benefits, the social security payroll tax has become extremely burdensome.

In the Nixon administration's proposed fiscal year 1974 budget, 29 cents of every tax dollar collected by the Federal Government will come from social security payroll taxes, while only 14 cents will come from corporate sources. Under the changes enacted last year, the rate of payroll taxes is 5.5 percent—paid by the employer and employee—for a combined tax of 11 percent on individual income up to $10,800. The 1972 social security tax maximum payment of $468 will increase to $594 for 1973 and $660 in 1974. Ten years ago, this same tax was $174.

Under a system of one-third general revenue financing, both the rate and the amount of tax would be cut for the average payroll taxpayer by more than $150.

General revenue financing at the level I have proposed will not come overnight. It could be phased in over a period of years or it could apply to the first $100 or $200 of payroll taxes. How it is done is not the crucial point. That it is done is what is crucial.

We simply must reduce the payroll tax burden on the average working family.

Title IV of the legislation would eliminate the earnings limitations for social security retirement benefits. During the last Congress, the amount of money that a social security recipient could earn without a reduction in his benefits was increased from $1,680 to $2,100 If a social security recipient earns more than $2,100, his social security benefits are reduced by $1 for every dollar earned over the $2,100 limit.

Eliminating the earnings limitation would encourage senior citizens to continue to work if they are able to do so. That should be the policy of our Government.

To my mind, there is no reason why a person should be denied the opportunity to work or be penalized for working because of age.

Finally, title V of the legislation would provide that individuals who are entitled to receive widow's or widower's benefits would receive 100 percent of such benefits.

This title is directed toward a particular problem enacted by last year's social security amendments. In that legislation, a provision was added that only widows would receive 100 percent of their husband's benefits.

Unfortunately, many of us felt that the direction of that provision was to provide that all widows, upon becoming eligible at age 62, would receive 100 percent of their husband's benefits. This, however, was not the case. An eligibility age limit of 65 was added—allowing only certain widows to receive 100 percent of benefits.

I have received literally hundreds of letters and phone calls from disappointed widows who expected to receive 100 percent of benefits but found their hopes reversed.

Under title V of this bill, widows who began drawing benefits at age 62 would be entitled to the full 100 percent of their husband's rightful benefit.

Mr. President, I believe that my bill is dedicated to pure and simple equity. It clearly draws the line as to who should pay and how much for retirement and medical benefits. It does not attempt to place dollar barriers between the patient and adequate health care. It does not attempt to strain the pocketbook of the average payroll taxpayer.

This legislation attacks head on the proposals of the Nixon administration to force the poor and the elderly to pay more for their medical care. It attacks head on the proposition that when Federal income taxes are not raised there is, in effect, no tax increase—even though you and I know, Mr. President, that when payroll taxes go up, that is the most unfair form of tax.

And it attacks head on the inequities built into the social security retirement system through artificially limiting productivity of our citizens or promising the widows of social security beneficiaries something they will not get.

I believe that these amendments are necessary. I have submitted other amendments; for example, an amendment which provides that with the increase of 20 percent in social security benefits, the other benefits that were previously added to social security would not be withdrawn or reduced. Last year we saw a 20 percent increase in social security, only to find that many a person on social security had his or her rent increased and other benefits reduced. Food stamps were taken away from them. In many instances, the increase resulted in a loss of income or income benefits that are related to income.

That is unfair. It is unkind. It was not intended; and that kind of administrative policy must be corrected by legislation.

I have previously introduced such legislation. Last year my distinguished senior colleague (Mr. MONDALE) and I presented such a bill to the Senate. It was passed here overwhelmingly, but it was dropped in conference. Simple, plain justice and equity require that when you increase the social security benefits, you do not rob the people of other benefits at the same time; but that is exactly what has been going on.

So, Mr. President, I believe that these amendments are not only necessary but just. They provide the elderly a more realistic opportunity to enjoy life and obtain the health care that they need. And they offer the working man relief from his crushing payroll tax burden.

I send the bill to the desk, Mr. President, for appropriate reference, and ask unanimous consent that the full text of the bill be printed in the RECORD with my remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1143

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

TITLE I

REDUCTIONS IN, AND EVENTUAL ELIMINATION OF, THE SUPPLEMENTARY MEDICAL INSURANCE DEDUCTIBLE

SEC. 101. (a)(1) Effective January 1, 1974, section 1833(b) of the Social Security Act is amended by striking out "shall be reduced by a deductible of $60" and inserting in lieu thereof "shall be reduced by a deductible of $50".

(2) Effective January 1, 1975, section 1833 (b) of such Act is amended by striking out "shall be reduced by a deductible of $50" and inserting in lieu thereof "shall be reduced by a deductible of $40".

(3) Effective January 1, 1976, section 1833 (b) of such Act is amended by striking out "shall be reduced by a deductible of $40" and inserting in lieu thereof "shall be reduced by a deductible of $30".

(4) Effective January 1, 1977, section 1833 (b) of such Act is amended by striking out "shall be reduced by a deductible of $30" and inserting in lieu thereof "shall be reduced by a deductible of $15".

(5) Effective January 1, 1978, section 1833 (b) of such Act is repealed.

(b)(1) Section 1835(c) of such Act is amended by striking out "but only if such charges for such services do not exceed $60" and inserting in lieu thereof "but only if such charges for such services do not exceed the supplementary medical insurance deductible (if any) which is in effect for the calendar year in which such services are provided".

(2) The amendment made by paragraph (1) shall take effect January 1, 1972.

TITLE II

"AUTOMATIC COVERAGE (WITHOUT PAYMENT OF PREMIUM) UNDER SUPPLEMENTAL MEDICAL INSURANCE PROGRAM

"SEC. 201. (a) Section 1831 of the Social Security Act is further amended to read as follows:

" 'SEC. 1831. There is hereby established an insurance program to provide medical insurance benefits in accordance with the provisions of this part for aged and disabled individuals who elect to enroll in such program or who are entitled to hospital insurance benefits under the program established by part A. The costs of the insurance program established by this part shall be financed from funds appropriated by the Federal Government, and the benefits under such program shall be paid from the Federal Supplementary Medical Insurance Trust Fund.'

"(b) Section 1836 of such Act is further amended by striking out 'is eligible to enroll in the insurance program' and inserting in lieu thereof 'is covered under the insurance program'.

"(c) Section 1837(a) is amended to read as follows:

" 'SEC. 1837. (a)(1) Any individual who for the month of July 1973, or any succeeding month, is covered by the hospital insurance program established by part A shall also be covered by the insurance program established by this part for each month for which he is covered by such program.

" '(2) Any individual who is not covered by the program established by this part for the month of July 1972, or any succeeding month, by reason of the provisions of subsection (a), shall, if he is eligible under section 1836 for coverage in the program established by this part, secure coverage by enrolling therefor in such manner and within