

H. R. 12471--Freedom of Information Act Amendments

1. The Director of Central Intelligence, by the National Security Act of 1947, is charged with responsibility to protect intelligence sources and methods from unauthorized disclosure (50 U. S. C. 403).
2. There is no specific legislation implementing this authority to strengthen the Director's ability to carry out his responsibilities under law.
3. If the veto of H. R. 12471 is not sustained, the result will be that sensitive intelligence sources and methods critically affecting the national security will be subject to detailed examination in our court system as a result of a suit to publish such information which can be brought by any person regardless of citizenship.
4. The President has already stated his concern that the legislation could adversely affect our military or intelligence secrets, and that diplomatic relations also could be adversely affected. The President has pointed out that the court should be forced to make what amounts to the initial classification decision in sensitive and complex areas where they have no particular expertise. The result would be that a determination by the Director of Central Intelligence that a disclosure of a document would endanger intelligence sources and methods could be overturned by a district judge who thought that the plaintiff's position was reasonable. This would give less weight before the courts to an Executive determination involving the protection of our most vital secrets and interests than is accorded determinations involving routine regulatory matters under standard administration law concepts.
5. The President's counterproposal for legislation would permit the courts to review classification under the Freedom of Information Act, but to uphold the classification if there is a reasonable basis to support it. Under the President's proposal the courts could consider all attendant evidence in camera and an in camera examination of the documents.